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AN

ESSAY

ON

CRIMES and PUNISHMENTS.

BY

The MARQUIS BECCARIA of MILAN.

WITH A

COMMENTARY

BY

M. DE VOLTAIRE.

A NEW EDITION CORRECTED.

In rebus quibuſcunque difficilioribus non expectandum, ut quis ſimul, & ſerat, & metat, ſed præparatione opus eſt, ut per gradus matureſcant. BACON.

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PREFACE

OF THE

TRANSLATOR.

PENAL LAWS, ſo conſiderable a part of every ſyſtem of legiſlation, and of ſo great importance to the happineſs, peace and ſecurity of every member of ſociety, are ſtill ſo imperfect, and are attended with ſo many unneceſſary circumſtances of cruelty in all nations, that an attempt to reduce them to the ſtandard of reaſon muſt be intereſting to all mankind. It is not ſurpriſing, then, that this little book hath engaged the attention of all ranks of people in every part of Europe. It is now about eighteen months ſince the firſt publication; in which time it hath paſſed no leſs than ſix editions in the original language; the

third of which was printed within ſix months after its firſt appearance. It hath been tranſlated into French; that tranſlation hath alſo been ſeveral times reprinted, and perhaps no book, on any ſubject, was ever received with more avidity, more generally read, or more univerſally applauded.

The author is the Marquis BECCARIA, of Milan. Upon conſidering the nature of the religion and government under which he lives, the reaſons for concealing his name are obvious. The whole was read, at different times, in a ſociety of learned men in that city, and was publiſhed at their deſire. As to the tranſlation, I have preſerved the order of the original, except in a paragraph or two, which I have taken the liberty to reſtore to the chapters to which they evidently belong, and from which they muſt have been accidentally detached. The French tranſlator hath gone much farther; he hath not only tranſpoſed every chapter, but

every

every paragraph in the whole book. But in this, I conceive, he hath aſſumed a right which belongs not to any tranſlator, and which cannot be juſtified. His diſpoſition may appear more ſyſtematical, but certainly the author has as undoubted a right to the arrangement of his own ideas as to the ideas themſelves; and therefore to deſtroy that arrangement, is to pervert his meaning, if he had any meaning in his plan, the contrary to which can hardly be ſuppoſed.

With regard to the Commentary, attributed to Monſ. de Voltaire, my only authority for ſuppoſing it his, is the voice of the public, which indeed is the only authority we have for moſt of his works. Let thoſe who are acquainted with the peculiarity of his manner judge for themſelves.

The facts above mentioned would preclude all apology for this tranſlation, if any apology were neceſſary, for tranſlating into our language a work, which,

from the nature of the ſubject, muſt be intereſting to every nation; but muſt be particularly acceptable to the Engliſh, from the eloquent and forcible manner in which the author pleads the cauſe of liberty, benevolence, and humanity. It may however be objected, that a treatiſe of this kind is uſeleſs in England, where, from the excellence of our laws and government, no examples of cruelty or oppreſſion are to be found. But it muſt alſo be allowed, that much is ſtill wanting to perfect our ſyſtem of legiſlation; the confinement of debtors, the filth and horror of our priſons, the cruelty of jailors, and the extortion of the petty officers of juſtice, to all which may be added the melancholy reflection, that the number of criminals put to death in England is much greater than in any other part of Europe, are conſiderations which will ſufficiently anſwer every objection. Theſe are my only reaſons for endeavouring to diffuſe the knowledge of the uſeful truths

contained

contained in this little eſſay; and I ſay, with my author, that if I can be inſtrumental in reſcuing a ſingle victim from the hand of tyranny or ignorance, his tranſports will ſufficiently conſole me for the contempt of all mankind.

CON-

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INTRO-

INTRODUCTION.

IN every human ſociety, there is an effort continually tending to confer on one part the height of power and happineſs, and to reduce the other to the extreme of weakneſs and miſery. The intent of good laws is to oppoſe this effort, and to diffuſe their influence univerſally and equally. But men generally abandon the care of their moſt important concerns to the uncertain prudence and diſcretion of thoſe, whoſe intereſt it is to reject the beſt and wiſeſt inſtitutions; and it is not till they have been led into a thouſand miſtakes, in matters the moſt eſſential to their lives and liberties, and are weary of ſuffering, that they can be induced to apply a remedy to the evils with which they are oppreſſed. It is then they begin to conceive, and acknowledge the moſt palpable truths, which, from their very ſimplicity, commonly eſcape vulgar minds, incapable of analyſing objects, accuſtomed to receive impreſſions without diſtinction, and to be determined rather

by the opinions of others, than by the reſult of their own examination.

If we look into hiſtory we ſhall find, that laws which are, or ought to be, conventions between men in a ſtate of freedom, have been, for the moſt part, the work of the paſſions of a few, or the conſequences of a fortuitous or temporary neceſſity; not dictated by a cool examiner of human nature, who knew how to collect in one point the actions of a multitude, and had this only end in view, *the greateſt happineſs of the greateſt number*. Happy are thoſe few nations, who have not waited till the ſlow ſucceſſion of human viciſſitudes ſhould, from the extremity of evil, produce a tranſition to good; but, by prudent laws, have facilitated the progreſs from one to the other! And how great are the obligations due from mankind to that philoſopher, who, from the obſcurity of his cloſet, had the courage to ſcatter among the multitude the ſeeds of uſeful truths, ſo long unfruitful!

The art of printing has diffuſed the knowledge of thoſe philoſophical truths, by which the relations between ſovereigns and their ſubjects, and between nations, are diſcovered. By this knowledge commerce is animated, and there has ſprung up a ſpirit of emulation, and induſtry, worthy

worthy of rational beings. These are the produce of this enlightened age; but the cruelty of punishments, and the irregularity of proceeding in criminal cases, so principal a part of the legislation, and so much neglected throughout Europe, has hardly ever been called in question. Errors, accumulated through many centuries, have never been exposed by ascending to general principles; nor has the force of acknowledged truths been ever opposed to the unbounded licentiousness of ill-directed power, which has continually produced so many authorized examples of the most unfeeling barbarity. Surely, the groans of the weak, sacrificed to the cruel ignorance and indolence of the powerful; the barbarous torments lavished and multiplied with useless severity, for crimes either not proved, or in their nature impossible; the filth and horrors of a prison, increased by the most cruel tormentor of the miserable, uncertainty, ought to have rouzed the attention of those, whose business is to direct the opinions of mankind.

The immortal *Montesquieu* has but slightly touched on this subject. Truth, which is eternally the same, has obliged me to follow the steps of that great man; but the studious part of mankind, for whom I write, will easily di-

ſtinguiſh the ſuperſtructure from the foundation. I ſhall be happy, if, with him, I can obtain the ſecret thanks of the obſcure and peaceful diſciples of reaſon and philoſophy, and excite that tender emotion, in which ſenſible minds ſympathize with him, who pleads the cauſe of humanity.

AN

AN ESSAY ON CRIMES AND PUNISHMENTS.

CHAP. I.

Of the Origin of Puniſhments.

LAWS are the conditions under which men, naturally independent, united themſelves in ſociety. Weary of living in a continual ſtate of war, and of enjoying a liberty which became of little value, from the uncertainty of its duration, they ſacrificed one part of it to enjoy the reſt in peace and ſecurity. The ſum of all theſe portions of the liberty of each individual conſtituted the ſovereignty of a nation; and was depoſited in the hands of the ſovereign, as the lawful adminiſtrator. But it was not ſufficient only to eſtabliſh this depoſite; it was alſo

neceſſary to defend it from the uſurpation of each individual, who will always endeavour to take away from the maſs, not only his own portion, but to encroach on that of others. Some motives, therefore, that ſtrike the ſenſes, were neceſſary to prevent the deſpotiſm of each individual from plunging ſociety into its former chaos. Such motives are the puniſhments eſtabliſhed againſt the infractors of the laws. I ſay, that motives of this kind are neceſſary; becauſe experience ſhews, that the multitude adopt no eſtabliſhed principle of conduct; and becauſe, ſociety is prevented from approaching to that diſſolution (to which, as well as all other parts of the phyſical and moral world, it naturally tends) only by motives that are the immediate objects of ſenſe, and which, being continually preſented to the mind, are ſufficient to counterbalance the effects of the paſſions of the individual which oppoſe the general good. Neither the power of eloquence, nor the ſublimeſt truths, are ſufficient to reſtrain, for any length of time, thoſe paſſions which are excited by the lively impreſſion of preſent objects.

CHAP.

CHAP. II.

Of the Right to puniſh.

EVERY puniſhment, which does not ariſe from abſolute neceſſity, ſays the great *Monteſquieu*, is tyrannical. A propoſition which may be made more general, thus. Every act of authority of one man over another, for which there is not an abſolute neceſſity, is tyrannical. It is upon this, then, that the ſovereign's right to puniſh crimes is founded; that is, upon the neceſſity of defending the public liberty, entruſted to his care, from the uſurpation of individuals; and puniſhments are juſt in proportion as the liberty, preſerved by the ſovereign, is ſacred and valuable.

Let us conſult the human heart, and there we ſhall find the foundation of the ſovereign's right to puniſh; for no advantage in moral policy can be laſting, which is not founded on the indelible ſentiments of the heart of man. Whatever law deviates from this principle will always meet with a reſiſtance, which will deſtroy it in the end; for the ſmalleſt force, continually applied,

plied, will overcome the moſt violent motions communicated to bodies.

No man ever gave up his liberty merely for the good of the public. Such a chimera exiſts only in romances. Every individual wiſhes, if poſſible, to be exempt from the compacts that bind the reſt of mankind.

The multiplication of mankind, though ſlow, being too great for the means which the earth, in its natural ſtate, offered to ſatisfy neceſſities, which every day became more numerous, obliged men to ſeparate again, and form new ſocieties. Theſe naturally oppoſed the firſt, and a ſtate of war was transferred from individuals to nations.

Thus it was neceſſity that forced men to give up a part of their liberty; it is certain, then, that every individual would chuſe to put into the public ſtock the ſmalleſt portion poſſible; as much only as was ſufficient to engage others to defend it. The aggregate of theſe, the ſmalleſt portions poſſible, forms the right of puniſhing: all that extends beyond this is abuſe, not juſtice.

Obſerve, that by *juſtice* I underſtand nothing more than that bond, which is neceſſary to keep the intereſt of individuals united; without

out which, men would return to their original ſtate of barbarity. All puniſhments, which exceed the neceſſity of preſerving this bond, are in their nature unjuſt. We ſhould be cautious how we aſſociate with the word *juſtice*, an idea of any thing real, ſuch as a phyſical power, or a being that actually exiſts. I do not, by any means, ſpeak of the juſtice of God, which is of another kind, and refers immediately to rewards and puniſhments in a life to come.

CHAP.

CHAP. III.

Conſequences of the foregoing Principles.

THE laws only can determine the puniſhment of crimes; and the authority of making penal laws can only reſide with the legiſlator, who repreſents the whole ſociety united by the ſocial compact. No magiſtrate then, (as he is one of the ſociety), can, with juſtice, inflict on any other member of the ſame ſociety, puniſhment that is not ordained by the laws. But as a puniſhment, increaſed beyond the degree fixed by the law, is the juſt puniſhment, with the addition of another; it follows, that no magiſtrate, even under a pretence of zeal, or the public good, ſhould increaſe the puniſhment already determined by the laws.

If every individual be bound to ſociety, ſociety is equally bound to him by a contract, which, from its nature, equally binds both parties. This obligation, which deſcends from the throne to the cottage, and equally binds the higheſt and loweſt of mankind, ſignifies nothing more, than that it is the intereſt of all, that conventions, which are uſeful to the greateſt number, ſhould

be

be punctually obſerved. The violation of this compact by any individual, is an introduction to anarchy.

The ſovereign, who repreſents the ſociety itſelf, can only make general laws to bind the members; but it belongs not to him to judge whether any individual has violated the ſocial compact, or incurred the puniſhment in conſequence. For in this caſe there are two parties, one repreſented by the ſovereign, who inſiſts upon the violation of the contract, and the other is the perſon accuſed, who denies it. It is neceſſary then that there ſhould be a third perſon to decide this conteſt; that is to ſay, a judge, or magiſtrate, from whoſe determination there ſhould be no appeal; and this determination ſhould conſiſt of a ſimple affirmation, or negation of fact.

If it can only be proved, that the ſeverity of puniſhments, though not immediately contrary to the public good, or to the end for which they were intended, *viz.* to prevent crimes, be uſeleſs; then ſuch ſeverity would be contrary to thoſe beneficent virtues, which are the conſequence of enlightened reaſon, which inſtructs the ſovereign to wiſh rather to govern men in a ſtate of freedom and happineſs, than of ſlavery. It would alſo be contrary to juſtice, and the ſocial compact.

CHAP.

CHAP. IV.

Of the Interpretation of Laws.

JUDGES, in criminal caſes, have no right to interpret the penal laws, becauſe they are not legiſlators. They have not received the laws from our anceſtors as a domeſtic tradition, or as the will of a teſtator, which his heirs and executors are to obey; but they receive them from a ſociety actually exiſting, or from the ſovereign, its repreſentative. Even the authority of the laws is not founded on any pretended obligation, or ancient convention; which muſt be null, as it cannot bind thoſe who did not exiſt at the time of its inſtitution; and unjuſt, as it would reduce men, in the ages following, to a herd of brutes, without any power of judging or acting. The laws receive their force and authority from an oath of fidelity, either tacit or expreſſed, which living ſubjects have ſworn to their ſovereign, in order to reſtrain the inteſtine fermentation of the private intereſts of individuals. From hence ſprings their true and natural authority. Who then is their lawful interpreter? The ſovereign, that

that is, the repreſentative of ſociety, and not the judge, whoſe office is only to examine, if a man have, or have not, committed an action contrary to the laws.

In every criminal cauſe the judge ſhould reaſon ſyllogiſtically. The *major* ſhould be the general law; the *minor* the conformity of the action, or its oppoſition to the laws; the *concluſion*, liberty, or puniſhment. If the judge be obliged by the imperfection of the laws, or chuſes to make any other, or more ſyllogiſms than this, it will be an introduction to uncertainty.

There is nothing more dangerous than the common axiom: *the ſpirit of the laws is to be conſidered.* To adopt it is to give way to the torrent of opinions. This may ſeem a paradox to vulgar minds, which are more ſtrongly affected by the ſmalleſt diſorder before their eyes, than by the moſt pernicious, though remote, conſequences produced by one falſe principle adopted by a nation.

Our knowledge is in proportion to the number of our ideas. The more complex theſe are, the greater is the variety of poſitions in which they may be conſidered. Every man hath his own particular point of view, and at different

times ſees the ſame objects in very different lights. The ſpirit of the laws will then be the reſult of the good or bad logic of the judge; and this will depend on his good or bad digeſtion; on the violence of his paſſions; on the rank and condition of the abuſed, or on his connections with the judge; and on all thoſe circumſtances which change the appearance of objects in the fluctuating mind of man. Hence we ſee the fate of a delinquent changed many times in paſſing through the different courts of judicature, and his life and liberty victims to the falſe ideas or ill humour of the judge; who miſtakes the vague reſult of his own confuſed reaſoning, for the juſt interpretation of the laws. We ſee the ſame crimes puniſhed in a different manner at different times in the ſame tribunals; the conſequence of not having conſulted the conſtant and invariable voice of the laws, but the erring inſtability of arbitrary interpretation.

The diſorders that may ariſe from a rigorous obſervance of the letter of penal laws, are not to be compared with thoſe produced by the interpretation of them. The firſt are temporary inconveniences which will oblige the legiſlator to correct the letter of the law, the want of preciſeneſs and uncertainty of which has occaſioned

ed theſe diſorders; and this will put a ſtop to the fatal liberty of explaining; the ſource of arbitrary and venal declamations. When the code of laws is once fixed, it ſhould be obſerved in the literal ſenſe, and nothing more is left to the judge than to determine, whether an action be, or be not, conformable to the written law. When the rule of right, which ought to direct the actions of the philoſopher as well as the ignorant, is a matter of controverſy, not of fact, the people are ſlaves to the magiſtrates. The deſpotiſm of this multitude of tyrants is more inſupportable, the leſs the diſtance is between the oppreſſor and the oppreſſed; more fatal than that of one, for the tyranny of many is not to be ſhaken off, but by having recourſe to that of one alone. It is more cruel, as it meets with more oppoſition, and the cruelty of a tyrant is not in proportion to his ſtrength, but to the obſtacles that oppoſe him.

Theſe are the means by which ſecurity of perſon and property is beſt obtained; which is juſt, as it is the purpoſe of uniting in ſociety; and it is uſeful, as each perſon may calculate exactly the inconveniencies attending every crime. By theſe means ſubjects will acquire a ſpirit of independence and liberty; however it may appear

to thoſe, who dare to call the weakneſs of ſubmitting blindly to their capricious and intereſted opinions, by the ſacred name of virtue.

Theſe principles will diſpleaſe thoſe who have made it a rule with themſelves, to tranſmit to their inferiors the tyranny they ſuffer from their ſuperiors. I ſhould have every thing to fear, if tyrants were to read my book; but tyrants never read.

CHAP.

CHAP. V.

Of the Obſcurity of Laws.

IF the power of interpreting laws be an evil, obſcurity in them muſt be another, as the former is the conſequence of the latter. This evil will be ſtill greater, if the laws be written in a language unknown to the people; who, being ignorant of the conſequences of their own actions, become neceſſarily dependent on a few, who are interpreters of the laws, which, inſtead of being public and general, are thus rendered private and particular. What muſt we think of mankind when we reflect, that ſuch is the eſtabliſhed cuſtom of the greateſt part of our poliſhed and enlightened Europe? Crimes will be leſs frequent, in proportion as the code of laws is more univerſally read, and underſtood; for there is no doubt, but that the eloquence of the paſſions is greatly aſſiſted by the ignorance and uncertainty of puniſhments.

Hence it follows, that without written laws, no ſociety will ever acquire a fixed form of government, in which the power is veſted in the

whole, and not in any part of the ſociety; and in which the laws are not to be altered but by the will of the whole, nor corrupted by the force of private intereſt. Experience and reaſon ſhew us, that the probability of human traditions diminiſhes in proportion as they are diſtant from their ſources. How then can laws reſiſt the inevitable force of time, if there be not a laſting monument of the ſocial compact?

Hence we ſee the uſe of printing, which alone makes the public, and not a few individuals, the guardians and defenders of the laws. It is this art which, by diffuſing literature, has gradually diſſipated the gloomy ſpirit of cabal and intrigue. To this art it is owing, that the atrocious crimes of our anceſtors, who were alternately ſlaves and tyrants, are become leſs frequent. Thoſe who are acquainted with the hiſtory of the two or three laſt centuries, may obſerve, how from the lap of luxury and effeminacy have ſprung the moſt tender virtues, humanity, benevolence, and toleration of human errors. They may contemplate the effects of, what was ſo improperly called, ancient ſimplicity and good faith; humanity groaning under implacable ſuperſtition; the avarice and ambition of a few, ſtaining

ing with human blood the thrones and palaces of kings; ſecret treaſons, and public maſſacres; every noble a tyrant over the people; and the miniſters of the goſpel of Chriſt bathing their hands in blood, in the name of the God of all mercy. We may talk as we pleaſe of the corruption and degeneracy of the preſent age, but happily we ſee no ſuch horrid examples of cruelty and oppreſſion.

CHAP.

CHAP. VI.

Of the Proportion between Crimes and Puniſhments.

IT is not only the common intereſt of mankind that crimes ſhould not be committed, but that crimes of every kind ſhould be leſs frequent, in proportion to the evil they produce to ſociety. Therefore, the means made uſe of by the legiſlature to prevent crimes, ſhould be more powerful, in proportion as they are deſtructive of the public ſafety and happineſs, and as the inducements to commit them are ſtronger. Therefore there ought to be a fixed proportion between crimes and puniſhments.

It is impoſſible to prevent entirely all the diſorders which the paſſions of mankind cauſe in ſociety. Theſe diſorders increaſe in proportion to the number of people, and the oppoſition of private intereſts. If we conſult hiſtory, we ſhall find them increaſing, in every ſtate, with the extent of dominion. In political arithmetic, it is neceſſary to ſubſtitute a calculation of probabilities to mathematical exactneſs. That force which continually impels us to our own private intereſt, like gravity, acts inceſſantly, unleſs it meets with an obſtacle to oppoſe it. The effects of this force

are

are the confuſed ſeries of human actions. Puniſhments, which I would call political obſtacles, prevent the fatal effects of private intereſt, without deſtroying the impelling cauſe, which is that ſenſibility inſeparable from man. The legiſlator acts, in this caſe, like a ſkilful architect, who endeavours to counteract the force of gravity by combining the circumſtances which may contribute to the ſtrength of his edifice.

The neceſſity of uniting in ſociety being granted, together with the conventions, which the oppoſite intereſts of individuals muſt neceſſarily require, a ſcale of crimes may be formed, of which the firſt degree ſhould conſiſt of thoſe which immediately tend to the diſſolution of ſociety, and the laſt, of the ſmalleſt poſſible injuſtice done to a private member of that ſociety. Between theſe extremes will be comprehended, all actions contrary to the public good, which are called criminal, and which deſcend by inſenſible degrees, decreaſing from the higheſt to the loweſt. If mathematical calculation could be applied to the obſcure and infinite combinations of human actions, there might be a correſponding ſcale of puniſhments deſcending from the greateſt to the leaſt: but it will be ſufficient that the wiſe legiſlator mark the principal diviſions, without diſturbing the order, leſt to crimes of the *firſt* degree

gree be aſſigned puniſhments of the *laſt*. If there were an exact and univerſal ſcale of crimes and puniſhments, we ſhould then have a common meaſure of the degree of liberty and ſlavery, humanity and cruelty, of different nations.

Any action, which is not comprehended in the above-mentioned ſcale, will not be called a crime, or puniſhed as ſuch, except by thoſe who have an intereſt in the denomination. The uncertainty of the extreme points of this ſcale, hath produced a ſyſtem of morality which contradicts the laws; a multitude of laws that contradict each other; and many which expoſe the beſt men to the ſevereſt puniſhments, rendering the ideas of *vice* and *virtue* vague and fluctuating, and even their exiſtence doubtful. Hence that fatal lethargy of political bodies, which terminates in their deſtruction.

Whoever reads, with a philoſophic eye, the hiſtory of nations, and their laws, will generally find, that the ideas of virtue and vice, of a good or a bad citizen, change with the revolution of ages; not in proportion to the alteration of circumſtances, and conſequently conformable to the common good; but in proportion to the paſſions and errors by which the different law-givers were ſucceſſively influenced. He will frequently obſerve, that the paſſions and vices of one age, are

are the foundation of the morality of the following; that violent paſſion, the offspring of fanaticiſm and enthuſiaſm, being weakened by time, which reduces all the phenomena of the natural and moral world to an equality, become, by degrees, the prudence of the age, and an uſeful inſtrument in the hands of the powerful or artful politician. Hence the uncertainty of our notions of honour and virtue; an uncertainty which will ever remain, becauſe they change with the revolutions of time, and names ſurvive the things they originally ſignified; they change with the boundaries of ſtates, which are often the ſame both in phyſical and moral geography.

Pleaſure and pain are the only ſprings of action in beings endowed with ſenſibility. Even among the motives which incite men to acts of religion, the inviſible Legiſlator has ordained rewards and puniſhments. From a partial diſtribution of theſe will ariſe that contradiction, ſo little obſerved, becauſe ſo common; I mean, that of puniſhing by the laws the crimes which the laws have occaſioned. If an equal puniſhment be ordained for two crimes that injure ſociety in different degree, there is nothing to deter men from committing the greater, as often as it is attended with greater advantage.

CHAP.

CHAP. VII.

Of eſtimating the Degree of Crimes.

THE foregoing reflections authoriſe me to aſſert, that crimes are only to be meaſured by the injury done to ſociety.

They err, therefore, who imagine that a crime is greater, or leſs, according to the intention of the perſon by whom it is committed; for this will depend on the actual impreſſion of objects on the ſenſes, and on the previous diſpoſition of the mind; both which will vary in different perſons, and even in the ſame perſon at different times, according to the ſucceſſion of ideas, paſſions, and circumſtances. Upon that ſyſtem, it would be neceſſary to form, not only a particular code for every individual, but a new penal law for every crime. Men, often with the beſt intention, do the greateſt injury to ſociety, and with the worſt, do it the moſt eſſential ſervices.

Others have eſtimated crimes rather by the dignity of the perſon offended, than by their conſequences to ſociety. If this were the true ſtandard, the ſmalleſt irreverence to the divine Being ought to be puniſhed with infinitely more ſeverity, than the aſſaſſination of a monarch.

In ſhort, others have imagined, that the greatneſs of the ſin ſhould aggravate the crime. But the fallacy of this opinion will appear on the ſlighteſt conſideration of the relations between man and man, and between God and man. The relations between man and man are relations of equality. Neceſſity alone hath produced, from the oppoſition of private paſſions and intereſts, the idea of public utility, which is the foundation of human juſtice. The other are relations of dependence, between an imperfect creature and his Creator, the moſt perfect of beings, who has reſerved to himſelf the ſole right of being both lawgiver and judge; for he alone can, without injuſtice, be, at the ſame time, both one and the other. If he hath decreed eternal puniſhments for thoſe who diſobey his will, ſhall an inſect dare to put himſelf in the place of divine juſtice, to pretend to puniſh for the Almighty, who is himſelf all-ſufficient; who cannot receive impreſſions of pleaſure or pain, and who alone, of all other beings, acts without being acted upon? The degree of ſin depends on the malignity of the heart, which is impenetrable to finite beings. How then can the degree of ſin ſerve as a ſtandard to determine the degree of crimes? If that were admitted, men may puniſh when God pardons, and pardon when God condemns; and thus act in oppoſition to the ſupreme Being.

CHAP. VIII.

Of the Diviſion of Crimes.

WE have proved, then, that crimes are to be eſtimated by *the injury done to ſociety*. This is one of thoſe palpable truths, which, though evident to the meaneſt capacity, yet, by a combination of circumſtances, are only known to a few thinking men in every nation, and in every age. But opinions, worthy only of the deſpotiſm of Aſia, and paſſions armed with power and authority, have, generally by inſenſible and ſometimes by violent impreſſions on the timid credulity of men, effaced thoſe ſimple ideas which perhaps conſtituted the firſt philoſophy of infant ſociety. Happily the philoſophy of the preſent enlightened age ſeems again to conduct us to the ſame principles, and with that degree of certainty which is obtained by a rational examination, and repeated experience.

A ſcrupulous adherence to order would require, that we ſhould now examine and diſtinguiſh the different ſpecies of crimes, and the modes of puniſhment; but they are ſo variable in their nature, from the different circumſtances of

of ages and countries, that the detail would be tireſome and endleſs. It will be ſufficient for my purpoſe, to point out the moſt general principles, and the moſt common and dangerous errors, in order to undeceive, as well thoſe who, from a miſtaken zeal for liberty, would introduce anarchy and confuſion, as thoſe who pretend to reduce ſociety in general to the regularity of a convent.

Some crimes are immediately deſtructive of ſociety, or its repreſentative; others attack the private ſecurity of the life, property, or honour of individuals; and a third claſs conſiſts of ſuch actions as are contrary to the laws which relate to the general good of the community.

The firſt, which are of the higheſt degree, as they are moſt deſtructive to ſociety, are called crimes of *Leze-majeſty* *. Tyranny and ignorance, which have confounded the cleareſt terms and ideas, have given this apellation to crimes of a different nature, and conſequently have eſtabliſhed the ſame puniſhment for each; and on this occaſion, as on a thouſand others, men have been ſacrificed victims to a word. Every crime, even of the moſt private nature, injures ſociety; but every crime does not threaten its immediate

* High-treaſon.

deſtruction. Moral, as well as phyſical actions, have their ſphere of activity differently circumſcribed, like all the movements of nature, by time and ſpace; it is therefore a ſophiſtical interpretation, the common philoſophy of ſlaves, that would confound the limits of things eſtabliſhed by eternal truth.

To theſe ſucceed crimes which are deſtructive of the ſecurity of individuals. This ſecurity being the principal end of all ſociety, and to which every citizen hath an undoubted right, it becomes indiſpenſably neceſſary, that to theſe crimes the greateſt of puniſhments ſhould be aſſigned.

The opinion, that every member of ſociety has a right to do any thing that is not contrary to the laws, without fearing any other inconveniences than thoſe which are the natural conſequences of the action itſelf, is a political dogma, which ſhould be defended by the laws, inculcated by the magiſtrates, and believed by the people; a ſacred dogma, without which there can be no lawful ſociety; a juſt recompence for our ſacrifice of that univerſal liberty of action, common to all ſenſible beings, and only limited by our natural powers. By this principle, our minds become free, active, and vigorous; by this alone we are inſpired with that virtue which knows no fear, ſo different from that pliant prudence,

dence, worthy of thoſe only who can bear a precarious exiſtence.

Attempts, therefore, againſt the life and liberty of a citizen, are crimes of the higheſt nature. Under this head we comprehend not only aſſaſſinations and robberies committed by the populace, but by grandees and magiſtrates; whoſe example acts with more force, and at a greater diſtance, deſtroying the ideas of juſtice and duty among the ſubjects, and ſubſtituting that of the right of the ſtrongeſt, equally dangerous to thoſe who exerciſe it and to thoſe who ſuffer.

CHAP. IX.

Of Honour.

THERE is a remarkable difference between the civil laws, thoſe jealous guardians of life and property, and the laws of, what is called, *honour*, which particularly reſpects the opinions of others. Honour is a term, which has been the foundation of many long and brilliant reaſonings, without annexing to it any preciſe or fixed idea. How miſerable is the condition of the human mind, to which the moſt diſtant, and leaſt eſſential matters, the revolution of the heavenly bodies, are more diſtinctly known, than the moſt intereſting truths of morality, which are always confuſed and fluctuating, as they happen to be driven by the gales of paſſion, or received and tranſmitted by ignorance! But this will ceaſe to appear ſtrange, if it be conſidered, that as objects, when too near the eye, appear confuſed, ſo the too great vicinity of the ideas of morality, is the reaſon why the ſimple ideas, of which they are compoſed, are eaſily confounded; but which muſt be ſeparated, before we can inveſtigate the phenomena of human

human ſenſibility; and the intelligent obſerver of human nature will ceaſe to be ſurpriſed, that ſo many ties, and ſuch an apparatus of morality, are neceſſary to the ſecurity and happineſs of mankind.

Honour, then, is one of thoſe complex ideas, which are an aggregate not only of ſimple ones, but of others ſo complicated, that in their various modes of affecting the human mind, they ſometimes exclude part of the elements of which they are compoſed; retaining only ſome few of the moſt common, as many algebraic quantities admit one common diviſor. To find this common diviſor of the different ideas attached to the word honour, it will be neceſſary to go back to the original formation of ſociety.

The firſt laws, and the firſt magiſtrates, owed their exiſtence to the neceſſity of preventing the diſorders, which the natural deſpotiſm of individuals would unavoidably produce. This was the object of the eſtabliſhment of ſociety, and was either in reality, or in appearance, the principal deſign of all codes of laws, even the moſt pernicious. But the more intimate connections of men, and the progreſs of their knowledge, gave riſe to an infinite number of neceſſities, and mutual acts of friendſhip, between

tween the members of ſociety. Theſe neceſſities were not foreſeen by the laws, and could not be ſatisfied by the actual power of each individual. At this epocha began to be eſtabliſhed the deſpotiſm of opinion, as being the only means of obtaining thoſe benefits which the law could not procure, and of removing thoſe evils, againſt which the laws were no ſecurity. It is opinion, that tormentor of the wiſe and the ignorant, that has exalted the appearance of virtue above virtue itſelf. Hence the eſteem of men becomes not only uſeful, but neceſſary, to every one, to prevent his ſinking below the common level. The ambitious man graſps at it, as being neceſſary to his deſigns; the vain man ſues for it, as a teſtimony of his merit; the honeſt man demands it as his due; and the moſt men conſider it as neceſſary to their exiſtence.

Honour, being produced after the formation of ſociety, could not be a part of the common depoſite, and therefore, whilſt we act under its influence, we return, for that inſtant, to a ſtate of nature, and withdraw ourſelves from the laws, which in this caſe are inſufficient for our protection.

Hence it follows, that in extreme political liberty, and in abſolute deſpotiſm, all ideas of honour diſappear, or are confounded with others.

thers. In the firſt caſe, reputation becomes uſeleſs from the deſpotiſm of the laws; and in the ſecond the deſpotiſm of one man, annulling civil exiſtence, reduces the reſt to a precarious and temporary perſonality. Honour, then, is one of the fundamental principles of thoſe monarchies, which are a limited deſpotiſm, and in theſe, like revolutions in deſpotic ſtates, it is a momentary return to a ſtate of nature, and original equality.

CHAP.

CHAP. X.

Of Duelling.

FROM the neceſſity of the eſteem of others, have ariſen ſingle combats, and they have been eſtabliſhed by the anarchy of the laws. They are thought to have been unknown to the ancients; perhaps becauſe they did not aſſemble in their temples, in their theatres, or with their friends, ſuſpiciouſly armed with ſwords; and, perhaps, becauſe ſingle combats were a common ſpectacle, exhibited to the people by gladiators, who were ſlaves, and whom freemen diſdained to imitate.

In vain have the laws endeavoured to aboliſh this cuſtom, by puniſhing the offenders with death. A man of honour, deprived of the eſteem of others, foreſees that he muſt be reduced, either to a ſolitary exiſtence, inſupportable to a ſocial creature, or become the object of perpetual inſult; conſiderations ſufficient to overcome the fear of death.

What is the reaſon that duels are not ſo frequent among the common people, as amongſt the great? Not only becauſe they do not wear ſwords,

ſwords, but becauſe to men of that claſs reputation is of leſs importance than it is to thoſe of a higher rank, who commonly regard each other with diſtruſt and jealouſy.

It may not be without its uſe to repeat here, what has been mentioned by other writers, *viz.* that the beſt method of preventing this crime is to puniſh the aggreſſor, that is, the perſon who gave occaſion to the duel, and to acquit him, who, without any fault on his ſide, is obliged to defend that, which is not ſufficiently ſecured to him by the laws.

CHAP.

CHAP. XI.

Of Crimes which diſturb the public Tranquillity.

ANOTHER claſs of crimes are thoſe which diſturb the public tranquillity and the quiet of the citizens; ſuch as tumults and riots in the public ſtreets, which are intended for commerce and the paſſage of the inhabitants; the diſcourſes of fanatics, which rouſe the paſſions of the curious multitude, and gain ſtrength from the number of their hearers, who, though deaf to calm and ſolid reaſoning, are always affected by obſcure and myſterious enthuſiaſm.

The illumination of the ſtreets, during the night, at the public expence; guards ſtationed in different quarters of the city; the plain and moral diſcourſes of religion, reſerved for the ſilence and tranquillity of churches, and protected by authority; and harangues in ſupport of the intereſt of the public, delivered only at the general meetings of the nation, in parliament, or where the ſovereign reſides; are all means to prevent the dangerous effects of the miſguided paſſions of the people. Theſe ſhould be the principal objects of the vigilance of a magi-

ſtrate, and which the French call *Police*; but if this magiſtrate ſhould act in an arbitrary manner, and not in conformity to the code of laws, which ought to be in the hand of every member of the community, he opens a door to tyranny, which always ſurrounds the confines of political liberty.

I do not know of any exception to this general axiom, that *Every member of the ſociety ſhould know when he is criminal, and when innocent.* If cenſors, and, in general, arbitrary magiſtrates, be neceſſary in any government, it proceeds from ſome fault in the conſtitution. The uncertainty of crimes hath ſacrificed more victims to ſecret tyranny, than have ever ſuffered by public and ſolemn cruelty.

What are, in general, the proper puniſhments for crimes? Is the puniſhment of death really *uſeful*, or neceſſary for the ſafety or good order of ſociety? Are tortures and torments conſiſtent with *juſtice*, or do they anſwer the *end* propoſed by the laws? Which is the beſt method of preventing crimes? Are the ſame puniſhments equally uſeful at all times? What influence have they on manners? Theſe problems ſhould be ſolved with that geometrical preciſion which the miſt of ſophiſtry, the ſeduction of eloquence, and the timidity of doubt are unable to reſiſt.

If I have no other merit than that of having firſt preſented to my country, with a greater degree of evidence, what other nations have written, and are beginning to practiſe, I ſhall account myſelf fortunate; but if, by ſupporting the rights of mankind and of invincible truth, I ſhall contribute to ſave from the agonies of death one unfortunate victim of tyranny, or of ignorance, equally fatal; his bleſſing, and tears of tranſport, will be a ſufficient conſolation to me for the contempt of all mankind.

I, Rutsem Van Rensselaer

CHAP.

CHAP. XII.

Of the Intent of Puniſhments.

FROM the foregoing conſiderations it is evident, that the intent of puniſhments is not to torment a ſenſible being, nor to undo a crime already committed. Is it poſſible that torments, and uſeleſs cruelty, the inſtruments of furious fanaticiſm, or of impotency of tyrants, can be authoriſed by a political body? which, ſo far from being influenced by paſſion, ſhould be the cool moderator of the paſſions of individuals. Can the groans of a tortured wretch recal the time paſt, or reverſe the crime he has committed?

The end of puniſhment, therefore, is no other, than to prevent others from committing the like offence. Such puniſhments, therefore, and ſuch a mode of inflicting them, ought to be choſen, as will make ſtrongeſt and moſt laſting impreſſions on the minds of others, with the leaſt torment to the body of the criminal.

CHAP. XIII.

Of the Credibility of Witneſſes.

TO determine exactly the credibility of a witneſs, and the force of evidence, is an important point in every good legiſlation. Every man of common ſenſe, that is, every one whoſe ideas have ſome connexion with each other, and whoſe ſenſations are conformable to thoſe of other men, may be a witneſs; but the credibility of his evidence will be in proportion as he is intereſted in declaring or concealing the truth. Hence it appears, how frivolous is the reaſoning of thoſe, who reject the teſtimony of women on account of their weakneſs; how puerile it is, not to admit the evidence of thoſe who are under ſentence of death, becauſe they are dead in law; and how irrational, to exclude perſons branded with infamy: for in all theſe caſes they ought to be credited, when they have no intereſt in giving falſe teſtimony.

The credibility of a witneſs, then, ſhould only diminiſh in proportion to the hatred, friendſhip, or connexions ſubſiſting between him and the delinquent. One witneſs is not ſufficient; for whilſt

whilſt the accuſed denies what the other affirms, truth remains ſuſpended, and the right that every one has to be believed innocent, turns the balance in his favour.

The credibility of a witneſs is the leſs, as the atrociouſneſs of the crime is greater, from the improbability of its having been committed; as in caſes of witchcraft, and acts of wanton cruelty. The writers on penal laws have adopted a contrary principle, *viz.* that the credibility of a witneſs is greater, as the crime is more atrocious. Behold their inhuman maxim, dictated by the moſt cruel imbecility. *In atrociſſimis, leviores conjecturæ ſufficiunt, & licet judici jura tranſgredi.* Let us tranſlate this ſentence, that mankind may ſee one of the many unreaſonable principles to which they are ignorantly ſubject. *In the moſt atrocious crimes the ſlighteſt conjectures are ſufficient, and the judge is allowed to exceed the limits of the law.* The abſurd practices of legiſlators are often the effect of timidity, which is a principal ſource of the contradictions of mankind. The legiſlators, (or rather lawyers, whoſe opinions, when alive, were intereſted and venal, but which after their death become of deciſive authority, and are ſovereign arbiters of the lives and fortunes of men), terrified by the condemnation of ſome innocent perſon, have bur-

dened the law with pompous and uſeleſs formalities, the ſcrupulous obſervance of which will place anarchical impunity on the throne of juſtice; at other times, perplexed by atrocious crimes of difficult proof, they imagined themſelves under a neceſſity of ſuperſeding the very formalities eſtabliſhed by themſelves; and thus, at one time, with deſpotic impatience, and at another with feminine timidity, they transform their ſolemn judgments into a game of hazard.

But to return. In the caſe of witchcraft, it is much more probable, that a number of men ſhould be deceived, than that any perſon ſhould exerciſe a power which God hath refuſed to every created being. In like manner, in caſes of wanton cruelty, the preſumption is always againſt the accuſer, without ſome motive of fear or hate. There are no ſpontaneous or ſuperfluous ſentiments in the heart of man; they are all the reſult of impreſſions on the ſenſes.

The credibility of a witneſs may alſo be diminiſhed, by his being a member of a private ſociety, whoſe cuſtoms and principles of conduct are either not known, or are different from thoſe of the public. Such a man has not only his own paſſions, but thoſe of the ſociety of which he is a member.

Finally,

Finally, the credibility of a witneſs is null, when the queſtion relates to the words of a criminal; for the tone of voice, the geſture, all that precedes, accompanies and follows the different ideas which men annex to the ſame words, may ſo alter and modify a man's diſcourſe, that it is almoſt impoſſible to repeat them preciſely in the manner in which they were ſpoken. Beſides, violent and uncommon actions, ſuch as real crimes, leave a trace in the multitude of circumſtances that attend them, and in their effects; but words remain only in the memory of the hearers, who are commonly negligent or prejudiced. It is infinitely eaſier then to found an accuſation on the words, than on the actions of a man; for in theſe, the number of circumſtances, urged againſt the accuſed, afford him variety of means of juſtification.

CHAP.

CHAP. XIV.

Of Evidence and the Proofs of a Crime, and of the Form of Judgment.

THE following general theorem is of great uſe in determining the certainty of fact. When the proofs of a crime are dependent on each other, that is, when the evidence of each witneſs, taken ſeparately, proves nothing; or when all the proofs are dependent upon one, the number of proofs neither increaſe nor diminiſh the probability of the fact; for the force of the whole is no greater than the force of that on which they depend: and if this fails, they all fall to the ground. When the proofs are independent on each other, the probability of the fact increaſes in proportion to the number of proofs; for the falſhood of one does not diminiſh the veracity of another.

It may ſeem extraordinary, that I ſpeak of probability with regard to crimes, which, to deſerve a puniſhment, muſt be certain. But this paradox will vaniſh, when it is conſidered, that, ſtrictly ſpeaking, moral certainty is only probability; but which is called a certainty, becauſe every man in his ſenſes aſſents to it from an habit

bit produced by the neceſſity of acting, and which is anterior to all ſpeculation. That certainty which is neceſſary to decide that the accuſed is guilty, is the very ſame which determines every man in the moſt important tranſactions of his life.

The proofs of a crime may be divided into two claſſes, perfect and imperfect. I call thoſe perfect which exclude the poſſibility of innocence; imperfect, thoſe which do not exclude this poſſibility. Of the firſt, one only is ſufficient for condemnation; of the ſecond, as many are required as form a perfect proof: that is to ſay, that though each of theſe, ſeparately taken, does not exclude the poſſibility of innocence, it is nevertheleſs excluded by their union. It ſhould be alſo obſerved, that the imperfect proofs, of which the accuſed, if innocent, might clear himſelf, and does not, become perfect.

But it is much eaſier to feel this moral certainty of proofs, than to define it exactly. For this reaſon, I think it an excellent law which eſtabliſhes aſſiſtants to the principal judge, and thoſe choſen by lot; for that ignorance, which judges by its feelings, is leſs ſubject to error, than the knowledge of the laws which judges by opinion. Where the laws are clear and pre-

cife,

ciſe, the office of the judge is merely to aſcertain the fact. If, in examining the proofs of a crime, acuteneſs and dexterity be required; if clearneſs and preciſion be neceſſary in ſumming up the reſult; to judge of the reſult itſelf, nothing is wanting but plain and ordinary good ſenſe, a leſs fallacious guide than the knowledge of a judge, accuſtomed to find guilty, and to reduce all things to an artificial ſyſtem, borrowed from his ſtudies. Happy the nation, where the knowledge of the law is not a ſcience!

It is an admirable law which ordains, that every man ſhall be tried by his peers; for when life, liberty and fortune are in queſtion, the ſentiments, which a difference of rank and fortune inſpire, ſhould be ſilent; that ſuperiority with which the fortunate look upon the unfortunate, and that envy with which the inferior regard their ſuperiors, ſhould have no influence. But when the crime is an offence againſt a fellow-ſubject, one half of the judges ſhould be peers to the accuſed, and the other peers to the perſon offended. So that all private intereſt, which, in ſpite of ourſelves, modifies the appearance of objects, even in the eyes of the moſt equitable, is counteracted, and nothing remains to turn aſide the direction of truth and the laws. It is alſo juſt, that the accuſed ſhould have the liberty of excluding

cluding a certain number of his judges. Where this liberty is enjoyed for a long time, without any inſtance to the contrary, the criminal ſeems to condemn himſelf.

All trials ſhould be public, that opinion, which is the beſt, or, perhaps, the only cement of ſociety, may curb the authority of the powerful, and the paſſions of the judge; and that the people may ſay, "We are protected by the laws; we "are not ſlaves:" a ſentiment which inſpires courage, and which is the beſt tribute to a ſovereign who knows his real intereſt. I ſhall not enter into particulars. There may be ſome perſons who expect that I ſhould ſay all that can be ſaid upon this ſubject; to ſuch, what I have already written muſt be unintelligible.

CHAP.

CHAP. XV.

Of ſecret Accuſations.

SECRET accuſations are a manifeſt abuſe, but conſecrated by cuſtom in many nations, where, from the weakneſs of the government, they are neceſſary. This cuſtom makes men falſe and treacherous. Whoever ſuſpects another to be an informer, beholds in him an enemy; and, from thence, mankind are accuſtomed to diſguiſe their real ſentiment; and from the habit of concealing them from others, they at laſt even hide them from themſelves. Unhappy are thoſe, who have arrived at this point! Without any certain and fixed principles to guide them, they fluctuate in the vaſt ſea of opinion, and are buſied only in eſcaping the monſters which ſurround them; to thoſe, the preſent is always embittered by the uncertainty of the future; deprived of the pleaſures of tranquillity and ſecurity, ſome fleeting moments of happineſs, ſcattered thinly through their wretched lives, conſole them for the miſery of exiſting. Shall we, amongſt ſuch men, find intrepid ſoldiers to defend their king and country? Amongſt ſuch men, ſhall we find in-

corruptible magiſtrates, who, with the ſpirit of freedom and patriotic eloquence, will ſupport and explain the true intereſt of their ſovereign; who, with the tributes, offer up at the throne the love and bleſſing of the people, and thus beſtow on the palaces of the great, and the humble cottage, peace and ſecurity; and to the induſtrious a proſpect of bettering their lot, that uſeful ferment and vital principle of ſtates?

Who can defend himſelf from calumny, armed with that impenetrable ſhield of tyranny, ſecrecy? What a miſerable government muſt that be, where the ſovereign ſuſpects an enemy in every ſubject, and, to ſecure the tranquillity of the public, is obliged to ſacrifice the repoſe of every individual!

By what arguments is it pretended, that *ſecret accuſations* may be juſtified? The public ſafety, ſay they, and the ſecurity and maintenance of the eſtabliſhed form of government. But what a ſtrange conſtitution is that, where the government, which hath in its favour not only power but opinion, ſtill more efficacious, yet fears its own ſubjects? *The indemnity of the informer.* Do not the laws defend him ſufficiently; and are there ſubjects more powerful than the laws? *The neceſſity of protecting the informer from infamy.* Then ſecret calumny is autho-

riſed, and puniſhed only when public. *The nature of the crime.* If actions, indifferent in themſelves, or even uſeful to the public, were called crimes, both the accuſation and the trial could never be too ſecret. But can there be any crime, committed againſt the public, which ought not to be publicly puniſhed? I reſpect all governments; and I ſpeak not of any one in particular. Such may ſometimes be the nature of circumſtances, that when abuſes are inherent in the conſtitution, it may be imagined, that to rectify them would be to deſtroy the conſtitution itſelf. But were I to dictate new laws in a remote corner of the univerſe, the good of poſterity, ever preſent to my mind, would hold back my trembling hand, and prevent me from authoriſing *ſecret accuſations.*

Public accuſations, ſays *Monteſquieu*, are more conformable to the nature of a republic, where zeal for the public good is the principal paſſion of a citizen, than of a monarchy, in which, as this ſentiment is very feeble, from the nature of the government, the beſt eſtabliſhment is that of *commiſſioners*, who, in the name of the public, accuſe the infractors of the laws. But in all governments, as well in a republic as in a monarchy, the puniſhment, due to the crime of which one accuſes another, ought to be inflicted on the informer.

CHAP.

CHAP. XVI.

Of Torture.

THE torture of a criminal, during the courſe of his trial, is a cruelty conſecrated by cuſtom in moſt nations. It is uſed with an intent either to make him confeſs his crime, or explain ſome contradictions, into which he had been led during his examination; or diſcover his accomplices; or for ſome kind of metaphyſical and incomprehenſible purgation of infamy; or, finally, in order to diſcover other crimes, of which he is not accuſed, but of which he may be guilty.

No man can be judged a criminal until he be found guilty; nor can ſociety take from him the public protection, until it have been proved that he has violated the conditions on which it was granted. What right, then, but that of power, can authoriſe the puniſhment of a citizen, ſo long as there remains any doubt of his guilt? The dilemma is frequent. Either he is guilty, or not guilty. If guilty, he ſhould only ſuffer the puniſhment ordained by the laws, and torture becomes uſeleſs, as his confeſſion is unneceſſary. If he be not guilty, you torture the

innocent; for, in the eye of the law, every man is innocent, whoſe crime has not been proved. Beſides, it is confounding all relations, to expect that a man ſhould be both the accuſer and accuſed; and that pain ſhould be the teſt of truth, as if truth reſided in the muſcles and fibres of a wretch in torture. By this method, the robuſt will eſcape, and the feeble be condemned. Theſe are the inconveniences of this pretended teſt of truth, worthy only of a cannibal; and which the Romans, in many reſpects barbarous, and whoſe ſavage virtue has been too much admired, reſerved for the ſlaves alone.

What is the political intention of puniſhments? To terrify, and to be an example to others. Is this intention anſwered, by thus privately torturing the guilty and the innocent? It is doubtleſs of importance, that no crime ſhould remain unpuniſhed; but it is uſeleſs to make a public example of the author of a crime hid in darkneſs. A crime already committed, and for which there can be no remedy, can only be puniſhed by a political ſociety, with an intention that no hopes of impunity ſhould induce others to commit the ſame. If it be true, that the number of thoſe, who, from fear or virtue, reſpect the laws, is greater than of thoſe by whom they are violated, the riſk of torturing an innocent perſon

perſon is greater, as there is a greater probability that, *cæteris paribus*, an individual hath obſerved, than that he hath infringed the laws.

There is another ridiculous motive for torture, namely, *to purge a man from infamy*. Ought ſuch an abuſe to be tolerated in the eighteenth century? Can pain, which is a ſenſation, have any connection with a moral ſentiment, a matter of opinion? Perhaps the rack may be conſidered as a refiner's furnace.

It is not difficult to trace this ſenſeleſs law to its origin; for an abſurdity, adopted by a whole nation, muſt have ſome affinity with other ideas, eſtabliſhed and reſpected by the ſame nation. This cuſtom ſeems to be the offspring of religion, by which mankind, in all nations and in all ages, are ſo generally influenced. We are taught by our infallible church, that thoſe ſtains of ſin, contracted through human frailty, and which have not deſerved the eternal anger of the Almighty, are to be purged away, in another life, by an incomprehenſible fire. Now infamy is a ſtain, and if the puniſhments and fire of purgatory can take away all ſpiritual ſtains, why ſhould not the pain of torture take away thoſe of a civil nature? I imagine, that the confeſſion of a criminal, which in ſome tribunals is required, as being eſſential to his condemnation, has a ſimilar

origin, and has been taken from the myſterious tribunal of penitence, where the confeſſion of ſins is a neceſſary part of the ſacrament. Thus have men abuſed the unerring light of revelation; and in the times of tractable ignorance, having no other, they naturally had recourſe to it on every occaſion, making the moſt remote and abſurd applications. Moreover, infamy is a ſentiment regulated neither by the laws nor by reaſon, but entirely by opinion. But torture renders the victim infamous, and therefore cannot take infamy away.

Another intention of torture is, to oblige the ſuppoſed criminal to reconcile the contradictions into which he may have fallen during his examination; as if the dread of puniſhment, the uncertainty of his fate, the ſolemnity of the court, the majeſty of the judge, and the ignorance of the accuſed, were not abundantly ſufficient to account for contradictions, which are ſo common to men even in a ſtate of tranquillity; and which muſt neceſſarily be multiplied by the perturbation of the mind of a man, entirely engaged in the thought of ſaving himſelf from imminent danger.

This infamous teſt of truth is a remaining monument of that ancient and ſavage legiſlation, in which trials by fire, by boiling water, or the uncer-

uncertainty of combats, were called *Judgments of God*; as if the links of that eternal chain, whose beginning is in the breast of the first cause of all things, could never be disunited by the institutions of men. The only difference between torture, and trials by fire and boiling water, is, that the event of the first depends on the will of the accused; and of the second, on a fact entirely physical and external: but this difference is apparent only, not real. A man on the rack, in the convulsions of torture, has it as little in his power to declare the truth, as, in former times, to prevent without fraud the effect of fire or of boiling water.

Every act of the will is invariably in proportion to the force of the impression on our senses. The impression of pain, then, may increase to such a degree, that, occupying the mind entirely, it will compel the sufferer to use the shortest method of freeing himself from torment. His answer, therefore, will be an effect as necessary as that of fire or boiling water; and he will accuse himself of crimes of which he is innocent. So that the very means employed to distinguish the innocent from the guilty, will most effectually destroy all difference between them.

It would be superfluous to confirm these reflections by examples of innocent persons, who from

from the agony of torture have confeſſed themſelves guilty: innumerable inſtances may be found in all nations, and in every age. How amazing, that mankind have always neglected to draw the natural concluſion! Lives there a man who, if he have carried his thoughts ever ſo little beyond the neceſſities of life, when he reflects on ſuch cruelty, is not tempted to fly from ſociety, and return to his natural ſtate of independence?

The reſult of torture, then, is a matter of calculation, and depends on the conſtitution, which differs in every individual, and is in proportion to his ſtrength and ſenſibility; ſo that to diſcover truth by this method, is a problem which may be better reſolved by a mathematician than a judge, and may be thus ſtated. *The force of the muſcles, and the ſenſibility of the nerves of an innocent perſon being given, it is required to find the degree of pain neceſſary to make him confeſs himſelf guilty of a given crime.*

The examination of the accuſed is intended to find out the truth; but if this be diſcovered with ſo much difficulty, in the air, geſture and countenance of a man at eaſe, how can it appear in a countenance diſtorted by the convulſions of torture. Every violent action deſtroys

thoſe

thoſe ſmall alterations in the features, which ſometimes diſcloſe the ſentiments of the heart.

Theſe truths were known to the Roman legiſlators, amongſt whom, as I have already obſerved, ſlaves, only, who were not conſidered as citizens, were tortured. They are known to the Engliſh, a nation in which the progreſs of ſcience, ſuperiority in commerce, riches and power, its natural conſequences, together with the numerous examples of virtue and courage, leave no doubt of the excellence of its laws. They have been acknowledged in Sweden, where torture has been aboliſhed. They are known to one of the wiſeſt monarchs in Europe, who, having ſeated philoſophy on the throne, by his beneficent legiſlation, has made his ſubjects free, though dependent on the laws; the only freedom that reaſonable men can deſire in the preſent ſtate of things. In ſhort, torture has not been thought neceſſary in the laws of armies, compoſed chiefly of the dregs of mankind, where its uſe ſhould ſeem moſt neceſſary. Strange phenomenon! that a ſet of men, hardened by ſlaughter, and familiar with blood, ſhould teach humanity to the ſons of peace.

It appears alſo, that theſe truths were known, though imperfectly, even to thoſe by whom torture has been moſt frequently practiſed; for a confeſſion

confeſſion made during torture is null, if it be not afterwards confirmed by an oath; which, if the criminal refuſes, he is tortured again. Some civilians, and ſome nations, permit this infamous *petitio principii* to be only three times repeated, and others leave it to the diſcretion of the judge; and therefore of two men equally innocent, or equally guilty, the moſt robuſt and reſolute will be acquitted, and the weakeſt and moſt puſillanimous will be condemned, in conſequence of the following excellent method of reaſoning. *I, the judge, muſt find ſome one guilty. Thou, who art a ſtrong fellow, haſt been able to reſiſt the force of torment; therefore I acquit thee. Thou, being weaker, haſt yielded to it; I therefore condemn thee. I am ſenſible, that the confeſſion, which was extorted from thee, has no weight: but if thou doſt not confirm by oath what thou haſt already confeſſed, I will have thee tormented again.*

A very ſtrange, but neceſſary conſequence of the uſe of torture, is that the caſe of the innocent is worſe than that of the guilty. With regard to the firſt, either he confeſſes the crime, which he has not committed, and is condemned; or he is acquitted, and has ſuffered a puniſhment he did not deſerve. On the contrary, the perſon who is really guilty has the moſt favourable

ſide

ſide of the queſtion; for if he ſupports the torture with firmneſs and reſolution, he is acquitted, and has gained, having exchanged a greater puniſhment for a leſs.

The law by which torture is authoriſed, ſays, *Men, be inſenſible to pain. Nature has indeed given you an irreſiſtible ſelf-love, and an unalienable right of ſelf-preſervation, but I create in you a contrary ſentiment, an heroical hatred of yourſelves. I command you to accuſe yourſelves, and to declare the truth, midſt the tearing of your fleſh, and the diſlocation of your bones.*

Torture is uſed to diſcover, whether the criminal be guilty of other crimes beſides thoſe of which he is accuſed; which is equivalent to the following reaſoning. *Thou art guilty of one crime, therefore it is poſſible that thou mayſt have committed a thouſand others: but the affair being doubtful, I muſt try it by my criterion of truth. The laws order thee to be tormented, becauſe thou art guilty, becauſe thou mayſt be guilty, and becauſe I chuſe thou ſhouldſt be guilty.*

Torture is uſed to make the criminal diſcover his accomplices; but if it has been demonſtrated that it is not a proper means of diſcovering truth, how can it ſerve to diſcover the accomplices, which is one of the truths required. Will not the man who accuſes himſelf, yet more readily

accuſe others? Beſides, is it juſt to torment one man for the crime of another? May not the accomplices be found out by the examination of the witneſſes, or of the criminal; from the evidence, or from the nature of the crime itſelf; in ſhort, by all the means that have been uſed to prove the guilt of the priſoner? The accomplices commonly fly, when their comrade is taken. The uncertainty of their fate condemns them to perpetual exile, and frees ſociety from the danger of further injury; whilſt the puniſhment of the criminal, by deterring others, anſwers the purpoſe for which it was ordained.

CHAP.

CHAP. XVII.

Of pecuniary Puniſhments.

THERE was a time when all puniſhments were pecuniary. The crimes of the ſubjects were the inheritance of the prince. An injury done to ſociety was a favour to the crown; and the ſovereign and magiſtrates, thoſe guardians of the public ſecurity, were intereſted in the violation of the laws. Crimes were tried, at that time, in a court of Exchequer, and the cauſe became a civil ſuit between the perſon accuſed and the crown. The magiſtrate then had other powers than were neceſſary for the public welfare, and the criminal ſuffered other puniſhments than the neceſſity of example required. The judge was rather a collector for the crown, an agent for the treaſury, than a protector and miniſter of the laws. But, according to this ſyſtem, for a man to confeſs himſelf guilty, was to acknowledge himſelf a debtor to the crown; which was, and is at preſent (the effects continuing after the cauſes have ceaſed) the intent of all criminal cauſes. Thus, the criminal who refuſes to confeſs his crime, though convicted by the moſt undoubted

proofs, will ſuffer a leſs puniſhment than if he had confeſſed; and he will not be put to the torture to oblige him to confeſs other crimes which he might have committed, as he has not confeſſed the principal. But the confeſſion being once obtained, the judge becomes maſter of his body, and torments him with a ſtudied formality, in order to ſqueeze out of him all the profit poſſible. Confeſſion, then, is allowed to be a convincing proof, eſpecially when obtained by the force of torture; at the ſame time that an extra-judicial confeſſion, when a man is at eaſe and under no apprehenſion, is not ſufficient for his condemnation.

All inquiries, which may ſerve to clear up the fact, but which may weaken the pretenſions of the crown, are excluded. It was not from compaſſion to the criminal, or from conſiderations of humanity, that torments were ſometimes ſpared, but out of fear of loſing thoſe rights which at preſent appear chimerical and inconceivable. The judge becomes an enemy to the accuſed, to a wretch, a prey to the horrors of a dungeon, to torture, to death, and an uncertain futurity, more terrible than all; he inquires not into the truth of the fact, but the nature of the crime; he lays ſnares to make him convict himſelf; he fears, leſt he ſhould not ſucceed in finding him guilty,

guilty, and leſt that infallibility which every man arrogates to himſelf ſhould be called in queſtion. It is in the power of the magiſtrate to determine, what evidence is ſufficient to ſend a man to priſon; that he may be proved innocent, he muſt firſt be ſuppoſed guilty. This is what is called an *offenſive* proſecution; and ſuch are all criminal proceedings, in the eighteenth century, in all parts of our poliſhed Europe. The true proſecution *for information*; that is, an impartial inquiry into the fact, that which reaſon preſcribes, which military laws adopt, and which Aſiatic deſpotiſm allows in ſuits of one ſubject againſt another, is very little practiſed in any courts of juſtice. What a labyrinth of abſurdities! Abſurdities, which will appear incredible to happier poſterity. The philoſopher only will be able to read, in the nature of man, the poſſibility of there ever having been ſuch a ſyſtem.

CHAP. XVIII.

Of Oaths.

THERE is a palpable contradiction between the laws and the natural ſentiments of mankind, in the caſe of *oaths*, which are adminiſtered to a criminal to make him ſpeak the truth, when the contrary is his greateſt intereſt. As if a man could think himſelf obliged to contribute to his own deſtruction; and as if, when intereſt ſpeaks, religion was not generally ſilent; religion, which in all ages hath, of all other things, been moſt commonly abuſed; and indeed, upon what motive ſhould it be reſpected by the wicked, when it has been thus violated by thoſe who were eſteemed the wiſeſt of men? The motives which religion oppoſes to the fear of impending evil, and the love of life, are too weak, as they are too diſtant, to make any impreſſion on the ſenſes. The affairs of the other world are regulated by laws entirely different from thoſe by which human affairs are directed; why then ſhould we endeavour to compromiſe matters between them? Why ſhould a man be reduced to the terrible alternative, either of offending God,

or

or of contributing to his own immediate deſtruction? The laws which require an oath in ſuch a caſe, leave him only the choice of becoming a bad Chriſtian or a martyr. For this reaſon, oaths become by degrees a mere formality, and all ſentiments of religion, perhaps the only motive of honeſty in the greateſt part of mankind, are deſtroyed. Experience proves their utility: I appeal to every judge, whether he has ever known that an oath alone has brought truth from the lips of a criminal; and reaſon tells us, it muſt be ſo; for all laws are uſeleſs, and, in conſequence, deſtructive, which contradict the natural feelings of mankind. Such laws are like a dike, oppoſed directly to the courſe of a torrent; it is either immediately overwhelmed, or, by a whirlpool formed by itſelf, it is gradually undermined and deſtroyed.

CHAP. XIX.

Of the Advantage of immediate Puniſhment.

THE more immediately, after the commiſſion of a crime, a puniſhment is inflicted, the more juſt and uſeful it will be. It will be more juſt, becauſe it ſpares the criminal the cruel and ſuperfluous torment of uncertainty, which increaſes in proportion to the ſtrength of his imagination and the ſenſe of his weakneſs; and becauſe the privation of liberty, being a puniſhment, ought to be inflicted before condemnation, but for as ſhort a time as poſſible. Impriſonments, I ſay, being only the means of ſecuring the perſon of the accuſed, until he be tried, condemned, or acquitted, ought not only to be of as ſhort duration, but attended with as little ſeverity as poſſible. The time ſhould be determined by the neceſſary preparation for the trial, and the right of priority in the oldeſt priſoners. The confinement ought not to be cloſer than is requiſite to prevent his flight, or his concealing the proofs of the crime; and the trial ſhould be conducted with all poſſible expedition. Can there be a more cruel contraſt than that be-

tween

tween the indolence of a judge, and the painful anxiety of the accuſed; the comforts and pleaſures of an inſenſible magiſtrate, and the filth and miſery of the priſoner? In general, as I have before obſerved, *The degree of the puniſhment, and the conſequences of a crime, ought to be ſo contrived, as to have the greateſt poſſible effect on others, with the leaſt poſſible pain to the delinquent.* If there be any ſociety in which this is not a fundamental principle, it is an unlawful ſociety; for mankind, by their union, originally intended to ſubject themſelves to the leaſt evils poſſible.

An immediate puniſhment is more uſeful; becauſe the ſmaller the interval of time between the puniſhment and the crime, the ſtronger and more laſting will be the aſſociation of the two ideas of *Crime* and *Puniſhment*: ſo that they may be conſidered, one as the cauſe, and the other as the unavoidable and neceſſary effect. It is demonſtrated, that the aſſociation of ideas is the cement which unites the fabric of the human intellect; without which, pleaſure and pain would be ſimple and ineffectual ſenſations. The vulgar, that is, all men who have no general ideas or univerſal principles, act in conſequence of the moſt immediate and familiar aſſociations; but the more remote and complex only preſent themſelves

themſelves to the minds of thoſe who are paſſionately attached to a ſingle object, or to thoſe of greater underſtanding, who have acquired an habit of rapidly comparing together a number of objects, and of forming a concluſion; and the reſult, that is, the action in conſequence, by theſe means, becomes leſs dangerous and uncertain.

It is, then, of the greateſt importance, that the puniſhment ſhould ſucceed the crime as immediately as poſſible, if we intend, that, in the rude minds of the multitude, the ſeducing picture of the advantage ariſing from the crime, ſhould inſtantly awake the attendant idea of puniſhment. Delaying the puniſhment ſerves only to ſeparate theſe two ideas; and thus affects the minds of the ſpectators rather as being a terrible ſight, than the neceſſary conſequence of a crime; the horror of which ſhould contribute to heighten the idea of the puniſhment.

There is another excellent method of ſtrengthening this important connection between the ideas of crime and puniſhment; that is, to make the puniſhment as analagous as poſſible to the nature of the crime; in order that the puniſhment may lead the mind to conſider the crime in a different point of view, from that in which

which it was placed by the flattering idea of promiſed advantages.

Crimes of leſs importance are commonly puniſhed, either in the obſcurity of a priſon, or the criminal is *tranſported*, to give, by his ſlavery, an example to ſocieties which he never offended; an example abſolutely uſeleſs, becauſe diſtant from the place where the crime was committed. Men do not, in general, commit great crimes deliberately, but rather in a ſudden guſt of paſſion; and they commonly look on the puniſhment due to a great crime as remote and improbable. The public puniſhment, therefore, of ſmall crimes will make a greater impreſſion, and, by deterring men from the ſmaller, will effectually prevent the greater.

CHAP.

CHAP. XX.

Of Acts of Violence.

SOME crimes relate to *perſon*, others to *property*. The firſt ought to be puniſhed corporally. The great and rich ſhould by no means have it in their power to ſet a price on the ſecurity of the weak and indigent; for then, riches, which, under the protection of the laws, are the reward of induſtry, would become the aliment of tyranny. Liberty is at an end, whenever the laws permit, that, in certain caſes, a man may ceaſe to be *a perſon*, and become *a thing*. Then will the powerful employ their addreſs to ſelect, from the various combinations of civil ſociety, all that is in their own favour. This is that magic art which transforms ſubjects into beaſts of burden, and which, in the hands of the ſtrong, is the chain that binds the weak and incautious. Thus it is, that in ſome governments, where there is all the appearance of liberty, tyranny lies concealed, and inſinuates itſelf into ſome neglected corner of the conſtitution, where it gathers ſtrength inſenſibly. Mankind

kind generally oppoſe, with reſolution, the aſſaults of barefaced and open tyranny; but diſregard the little inſect that gnaws through the dike, and opens a ſure, though ſecret, paſſage to inundation.

CHAP.

CHAP. XXI.

Of the Puniſhment of the Nobles.

WHAT puniſhments ſhall be ordained for the nobles, whoſe privileges make ſo great a part of the laws of nations? I do not mean to inquire whether the hereditary diſtinction between nobles and commoners be uſeful in any government, or neceſſary in a monarchy; or whether it be true, that they form an intermediate power, of uſe in moderating the exceſſes of both extremes; or whether they be not rather ſlaves to their own body, and to others, confining within a very ſmall circle the natural effects and hopes of induſtry, like thoſe little fruitful ſpots ſcattered here and there in the ſandy deſerts of Arabia; or whether it be true, that a ſubordination of rank and condition is inevitable, or uſeful in ſociety; and if ſo, whether this ſubordination ſhould not rather ſubſiſt between individuals than particular bodies; whether it ſhould not rather circulate through the whole body politic, than be confined to one part; and rather than be perpetual, ſhould it not be inceſſantly produced and deſtroyed. Be theſe as they

may, I assert that the punishment of a nobleman should in no wise differ from that of the lowest member of society.

Every lawful distinction, either in honours or riches, supposes previous equality, founded on the laws, on which all the members of society are considered as being equally dependent. We should suppose that men, in renouncing their natural despotism, said, *the wisest and most industrious among us shall obtain the greatest honours, and his dignity shall descend to his posterity. The fortunate and happy may hope for greater honours, but let him not therefore be less afraid than others of violating those conditions on which he is exalted.* It is true, indeed, that no such decrees were ever made in a general diet of mankind, but they exist in the invariable relations of things: nor do they destroy the advantages which are supposed to be produced by the class of nobles, but prevent the inconveniences; and they make the laws respectable by destroying all hopes of impunity.

It may be objected, that the same punishment inflicted on a nobleman and a plebeian, becomes really different from the difference of their education, and from the infamy it reflects on an illustrious family; but I answer, that punishments are to be estimated, not by the sensibility

of the criminal, but by the injury done to ſociety; which injury is augmented by the high rank of the offender. The preciſe equality of a puniſhment can never be more than external, as it is in proportion to the degree of ſenſibility, which differs in every individual. The infamy of an innocent family may be eaſily obliterated by ſome public demonſtration of favour from the ſovereign; and forms have always more influence than reaſon on the gazing multitude.

CHAP.

CHAP. XXII.

Of Robbery.

THE puniſhment of robbery, not accompanied with violence, ſhould be pecuniary. He who endeavours to enrich himſelf with the property of another, ſhould be deprived of part of his own. But this crime, alas! is commonly the effect of miſery and deſpair; the crime of that unhappy part of mankind, to whom the right of excluſive property, a terrible, and perhaps unneceſſary right, has left but a bare exiſtence. Beſides, as pecuniary puniſhment may increaſe the number of poor, and may deprive an innocent family of ſubſiſtence, the moſt proper puniſhment will be that kind of ſlavery, which alone can be called juſt; that is, which makes the ſociety, for a time, abſolute maſter of the perſon and labour of the criminal, in order to oblige him to repair, by this dependence, the unjuſt deſpotiſm he uſurped over the property of another, and his violation of the ſocial compact.

When robbery is attended with violence, corporal puniſhment ſhould be added to ſlavery.

Many writers have ſhewn the evident diſorder which muſt ariſe from not diſtinguiſhing the puniſhment due to robbery with violence, and that due to theft, or robbery committed with dexterity, abſurdly making a ſum of money equivalent to a man's life. But it can never be ſuperfluous to repeat, again and again, thoſe truths of which mankind have not profited; for political machines preſerve their motion much longer than others, and receive a new impulſe with more difficulty. Theſe crimes are in their nature abſolutely different, and this axiom is as certain in politics as in mathematics, that between qualities of different natures there can be no ſimilitude.

CHAP.

CHAP. XXIII.

Of Infamy, conſidered as a Puniſhment.

THOSE injuries, which affect the honour, that is, that juſt portion of eſteem which every citizen has a right to expect from others, ſhould be puniſhed with infamy. Infamy is a mark of the public diſapprobation, which deprives the object of all conſideration in the eyes of his fellow citizens, of the confidence of his country, and of that fraternity which exiſts between members of the ſame ſociety. This is not always in the power of the laws. It is neceſſary that the infamy inflicted by the laws ſhould be the ſame with that which reſults from the relations of things, from univerſal morality, or from that particular ſyſtem, adopted by the nation and the laws, which governs the opinion of the vulgar. If, on the contrary, one be different from the other, either the laws will no longer be reſpected, or the received notions of morality and probity will vaniſh in ſpight of the declamations of moraliſts, which are weak to reſiſt the force of example. If we declare thoſe actions infamous, which are in themſelves indifferent, we leſſen the infamy of thoſe which are really infamous.

The puniſhment of infamy ſhould not be too frequent, for the power of opinion grows weaker

by repetition; nor ſhould it be inflicted on a number of perſons at the ſame time, for the infamy of many reſolves itſelf into the infamy of none.

Painful and corporal puniſhments ſhould never be applied to fanaticiſm; for being founded on pride, it glories in perſecution. Infamy and ridicule only ſhould be employed againſt fanatics: if the firſt, their pride will be over-balanced by the pride of the people; and we may judge of the power of the ſecond, if we conſider that even truth is obliged to ſummon all her force, when attacked by error armed with ridicule. Thus, by oppoſing one paſſion to another, and opinion to opinion, a wiſe legiſlator puts an end to the admiration of the populace, occaſioned by a falſe principle, the original abſurdity of which is veiled by ſome well-deduced conſequences.

This is the method to avoid confounding the immutable relations of things, or oppoſing nature, whoſe actions not being limited by time, but operating inceſſantly, overturn and deſtroy all thoſe vain regulations which contradict her laws. It is not only in the fine arts that the imitation of nature is the fundamental principle; it is the ſame in ſound policy, which is no other than the art of uniting, and directing to the ſame end, the natural and immutable ſentiments of mankind.

CHAP.

CHAP. XXIV.

Of Idleneſs.

A WISE government will not ſuffer, in the midſt of labour and induſtry, that kind of political idleneſs, which is confounded, by rigid declaimers, with the leiſure attending riches acquired by induſtry, which is of uſe to an increaſing ſociety, when confined within proper limits. I call thoſe politically idle, who neither contribute to the good of ſociety by their labour nor their riches; who continually accumulate, but never ſpend; and are reverenced by the vulgar with ſtupid admiration, and regarded by the wiſe with diſdain; who, being victims to a monaſtic life, and deprived of all incitement to the activity which is neceſſary to preſerve or increaſe its comforts, devote all their vigour to paſſions of the ſtrongeſt kind, the paſſions of opinion. I call not him idle, who enjoys the fruits of the virtues or vices of his anceſtors, and in exchange for his pleaſures ſupports the induſtrious poor. It is not then the narrow virtue of auſtere moraliſts, but the laws, that ſhould determine what ſpecies of idleneſs deſerves puniſhment.

CHAP. XXV.

Of Baniſhment, and Confiſcation.

HE who diſturbs the public tranquillity, who does not obey the laws, who violates the conditions on which men mutually ſupport and defend each other, ought to be excluded from ſociety, that is, baniſhed.

It ſeems as if baniſhment ſhould be the puniſhment of thoſe, who, being accuſed of an atrocious crime, are probably, but not certainly, guilty. For this purpoſe would be required a law, the leaſt arbitrary, and the moſt preciſe poſſible; which ſhould condemn to baniſhment thoſe who have reduced the community to the fatal alternative, either of fearing or puniſhing them unjuſtly; ſtill, however, leaving them the ſacred right of proving their innocence. The reaſons ought to be ſtronger for baniſhing a citizen than a ſtranger, and for the firſt accuſation than for one who hath been often accuſed.

Should the perſon who is excluded for ever from ſociety be deprived of his property? This queſtion may be conſidered in different lights. The confiſcation of effects, added to baniſh-

ment,

ment, is a greater puniſhment than baniſhment alone; there ought then to be ſome caſes, in which, according to the crime, either the whole fortune ſhould be confiſcated, or part only, or none at all. The whole ſhould be forfeited, when the law, which ordains baniſhment, declares, at the ſame time, that all connections between the ſociety and the criminal are annihilated. In this caſe, the citizen dies, the man only remains; and with reſpect to a political body, the death of the *citizen* ſhould have the ſame conſequences with the death of the *man*. It ſeems to follow, then, that in this caſe, the effects of the criminal ſhould devolve to his lawful heirs. But it is not on account of this refinement that I diſapprove of confiſcations. If ſome have inſiſted, that they were a reſtraint to vengeance, and the violence of particulars, they have not reflected, that though puniſhments be productive of good, they are not, on that account, more juſt; to be juſt, they muſt be neceſſary. Even an uſeful injuſtice can never be allowed by a legiſlator, who means to guard againſt watchful tyranny; which, under the flattering pretext of momentary advantages, would eſtabliſh permanent principles of deſtruction, and, to procure the eaſe of a few in a high ſtation, would draw tears from thouſands of the poor.

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The law which ordains confiſcations, ſets a price on the head of the ſubject, with the guilty puniſhes the innocent, and by reducing them to indigence and deſpair, tempts them to become criminal. Can there be a more melancholy ſpectacle, than a whole family, overwhelmed with infamy and miſery, from the crime of their chief? a crime, which, if it had been poſſible, they were reſtrained from preventing, by that ſubmiſſion which the laws themſelves have ordained.

CHAP.

CHAP. XXVI.

Of the Spirit of Family in States.

IT is remarkable, that many fatal acts of injuſtice have been authoriſed and approved, even by the wiſeſt and moſt experienced men, in the freeſt republics. This has been owing to their having conſidered the ſtate, rather as a ſociety of *families*, than of *men*. Let us ſuppoſe a nation, compoſed of an hundred thouſand men, divided into twenty thouſand families of five perſons each, including the head or maſter of the family, its repreſentative. If it be an aſſociation of *families*, there will be twenty thouſand *men*, and eighty thouſand ſlaves; if of *men*, there will be an hundred thouſand citizens, and not one ſlave. In the firſt caſe, we behold a republic, and twenty thouſand little monarchies, of which the heads are the ſovereigns; in the ſecond, the ſpirit of liberty will not only breathe in every public place of the city, and in the aſſemblies of the nation, but in private houſes, where men find the greateſt part of their happineſs or miſery. As laws and cuſtoms are always the effect of a republic, if the ſociety be an aſſociation

aſſociation of the heads of families, the ſpirit of monarchy will gradually make its way into the republic itſelf, as its effects will only be reſtrained by the oppoſite intereſts of each, and not by an univerſal ſpirit of liberty and equality. The private ſpirit of family is a ſpirit of minuteneſs, and confined to little concerns. Public ſpirit, on the contrary, is influenced by general principles, and from facts deduces general rules of utility to the greateſt number.

In a republic of families, the children remain under the authority of the father, as long as he lives, and are obliged to wait until death for an exiſtence dependent on the laws alone. Accuſtomed to kneel and tremble in their tender years, when their natural ſentiments were leſs reſtrained by that caution, obtained by experience, which is called moderation, how ſhould they reſiſt thoſe obſtacles, which vice always oppoſes to virtue, in the languor and decline of age, when the deſpair of reaping the fruits is alone ſufficient to damp the vigour of their reſolutions.

In a republic, where every man is a citizen, family ſubordination is not the effect of compulſion, but of contract; and the ſons, diſengaged from the natural dependence, which the weakneſs of infancy and the neceſſity of educa-

tion required, become free members of ſociety, but remain ſubject to the head of the family for their own advantage, as in the great ſociety.

In a republic of families, the young people, that is, the moſt numerous and moſt uſeful part of the nation, are at the diſcretion of their fathers: in a republic of men, they are attached to their parents by no other obligation, than that ſacred and inviolable one of mutual aſſiſtance, and of gratitude for the benefits they have received; a ſentiment, deſtroyed not ſo much by the wickedneſs of the human heart, as by a miſtaken ſubjection, preſcribed by the laws.

Theſe contradictions between the laws of families, and the fundamental laws of a ſtate, are the ſource of many others between public and private morality, which produce a perpetual conflict in the mind. Domeſtic morality inſpires ſubmiſſion and fear: the other, courage and liberty. That inſtructs a man to confine his beneficence to a ſmall number of perſons, not of his own choice; this, to extend it to all mankind: that commands a continual ſacrifice of himſelf to a vain idol, called the *good of the family*, which is often no real good to any one of thoſe who compoſe it; this teaches him to conſider his own advantage without offending the laws, or excites him to ſacrifice himſelf for the

good of his country, by rewarding him beforehand with the fanaticiſm it inſpires. Such contradictions are the reaſon, that men neglect the purſuit of virtue, which they can hardly diſtinguiſh midſt the obſcurity and confuſion of natural and moral objects. How frequently are men, upon a retroſpection of their actions, aſtoniſhed to find themſelves diſhoneſt.

In proportion to the increaſe of ſociety, each member becomes a ſmaller part of the whole; and the republican ſpirit diminiſhes in the ſame proportion, if neglected by the laws. Political ſocieties, like the human body, have their limits circumſcribed, which they cannot exceed without diſturbing their economy. It ſeems as if the greatneſs of a ſtate ought to be inverſely as the ſenſibility and activity of the individuals; if, on the contrary, population and activity increaſe in the ſame proportion, the laws will with difficulty prevent the crimes ariſing from the good they have produced. An overgrown republic can only be ſaved from deſpotiſm, by ſubdividing it into a number of confederate republics. But how is this practicable? By a deſpotic dictator, who, with the courage of *Sylla*, has as much genius for building up, as that Roman had for pulling down. If he be an ambitious man, his reward will be immortal glory; if a philoſopher,

pher, the bleſſings of his fellow-citizens will ſufficiently conſole him for the loſs of authority, though he ſhould not be inſenſible to their ingratitude.

In proportion as the ſentiments, which unite us to the ſtate, grow weaker, thoſe which attach us to the objects which more immediately ſurround us grow ſtronger; therefore, in the moſt deſpotic government, friendſhips are more durable, and domeſtic virtues (which are always of the loweſt claſs) are the moſt common, or the only virtues exiſting. Hence it appears how confined have been the views of the greateſt number of legiſlators.

CHAP. XXVII.

Of the Mildneſs of Puniſhments.

THE courſe of my ideas has carried me away from my ſubject, to the elucidation of which I now return. Crimes are more effectually prevented by the *certainty*, than the *ſeverity* of puniſhment. Hence, in a magiſtrate, the neceſſity of vigilance, and, in a judge, of implacability, which, that it may become an uſeful virtue, ſhould be joined to a mild legiſlation. The certainty of a ſmall puniſhment will make a ſtronger impreſſion, than the fear of one more ſevere, if attended with the hopes of eſcaping; for it is the nature of mankind to be terrified at the approach of the ſmalleſt inevitable evil, whilſt hope, the beſt gift of heaven, hath the power of diſpelling the apprehenſion of a greater; eſpecially if ſupported by examples of impunity, which weakneſs or avarice too frequently afford.

If puniſhments be very ſevere, men are naturally led to the perpetration of other crimes, to avoid the puniſhment due to the firſt. The countries and times moſt notorious for ſeverity

of

of punishments, were always those in which the most bloody and inhuman actions and the most atrocious crimes were committed; for the hand of the legislator and the assassin were directed by the same spirit of ferocity; which, on the throne, dictated laws of iron to slaves and savages, and in private instigated the subject to sacrifice one tyrant, to make room for another.

In proportion as punishments become more cruel, the minds of men, as a fluid rises to the same height with that which surrounds it, grow hardened and insensible; and the force of the passions still continuing, in the space of an hundred years, the *wheel* terrifies no more than formerly the *prison*. That a punishment may produce the effect required, it is sufficient that the *evil* it occasions should exceed the *good* expected from the crime; including in the calculation the certainty of the punishment, and the privation of the expected advantage. All severity beyond this is superfluous, and therefore tyrannical.

Men regulate their conduct by the repeated impression of evils they know, and not by those with which they are unacquainted. Let us, for example, suppose two nations, in one of which the greatest punishment is *perpetual slavery*, and in the other *the wheel*. I say, that both will in-

ſpire the ſame degree of terror; and that there can be no reaſons for increaſing the puniſhments of the firſt, which are not equally valid for augmenting thoſe of the ſecond to more laſting and more ingenious modes of tormenting; and ſo on to the moſt exquiſite refinements of a ſcience too well known to tyrants.

There are yet two other conſequences of cruel puniſhments, which counteract the purpoſe of their inſtitution, which was, to prevent crimes. The *firſt* ariſes from the impoſſibility of eſtabliſhing an exact proportion between the crime and puniſhment; for though ingenious cruelty hath greatly multiplied the variety of torments, yet the human frame can ſuffer only to a certain degree, beyond which it is impoſſible to proceed, be the enormity of the crime ever ſo great. The *ſecond* conſequence is impunity. Human nature is limited no leſs in evil than in good. Exceſſive barbarity can never be more than temporary; it being impoſſible that it ſhould be ſupported by a permanent ſyſtem of legiſlation; for if the laws be too cruel, they muſt be altered, or anarchy and impunity will ſucceed.

Is it poſſible, without ſhuddering with horror, to read in hiſtory of the barbarous and uſeleſs torments that were coolly invented and executed by men who were called ſages? Who does not tremble

tremble at the thoughts of thouſands of wretches, whom their miſery, either cauſed or tolerated by the laws which favoured the few, and outraged the many, had forced in deſpair to return to a ſtate of nature; or accuſed of impoſſible crimes, the fabric of ignorance and ſuperſtition; or guilty only of having been faithful to their own principles; who, I ſay, can, without horror, think of their being torn to pieces with ſlow and ſtudied barbarity, by men endowed with the ſame paſſions and the ſame feelings? A delightful ſpectacle to a fanatic multitude!

CHAP.

CHAP. XXVIII.

Of the Punishment of Death.

THE useless profusion of punishments, which has never made men better, induces me to inquire, whether the punishment of *death* be really just or useful in a well-governed state? What *right*, I ask, have men to cut the throats of their fellow-creatures? Certainly not that on which the sovereignty and laws are founded. The laws, as I have said before, are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible, that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all good, life? If it were so, how shall it be reconciled to the maxim which tells us, that a man has no right to kill himself? Which he certainly must have, if he could give it away to another.

But the punishment of death is not authorised by any right; for I have demonstrated that no such

ſuch right exiſts. It is therefore a war of a whole nation againſt a citizen, whoſe deſtruction they conſider as neceſſary, or uſeful to the general good. But if I can further demonſtrate, that it is neither neceſſary nor uſeful, I ſhall have gained the cauſe of humanity.

The death of a citizen cannot be neceſſary, but in one caſe. When, though deprived of his liberty, he has ſuch power and connections as may endanger the ſecurity of the nation; when his exiſtence may produce a dangerous revolution in the eſtabliſhed form of government. But even in this caſe it can only be neceſſary, when a nation is on the verge of recovering or loſing its liberty; or in times of abſolute anarchy, when the diſorders themſelves hold the place of laws. But in a reign of tranquillity; in a form of government approved by the united wiſhes of the nation; in a ſtate fortified from enemies without, and ſupported by ſtrength within, and opinion, perhaps more efficacious; where all power is lodged in the hands of the true ſovereign; where riches can purchaſe pleaſures and not authority, there can be no neceſſity for taking away the life of a ſubject.

If the experience of all ages be not ſufficient to prove, that the puniſhment of death has never prevented determined men from injuring ſociety;

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if the example of the Romans; if twenty years reign of Elizabeth, empreſs of Ruſſia, in which ſhe gave the fathers of their country an example more illuſtrious than many conqueſts bought with blood; if, I ſay, all this be not ſufficient to perſuade mankind, who always ſuſpect the voice of reaſon, and who chuſe rather to be led by authority, let us conſult human nature in proof of my aſſertion.

It is not the intenſeneſs of the pain that has the greateſt effect on the mind, but its continuance; for our ſenſibility is more eaſily and more powerfully affected by weak but repeated impreſſions, than by a violent but momentary impulſe. The power of habit is univerſal over every ſenſible being. As it is by that we learn to ſpeak, to walk, and to ſatisfy our neceſſities, ſo the ideas of morality are ſtamped on our minds by repeated impreſſions. The death of a criminal is a terrible but momentary ſpectacle, and therefore a leſs efficacious method of deterring others than the continued example of a man deprived of his liberty, condemned as a beaſt of burden, to repair, by his labour, the injury he has done to ſociety. *If I commit ſuch a crime*, ſays the ſpectator to himſelf, *I ſhall be reduced to that miſerable condition for the reſt of my life.* A much more powerful preventive than the fear

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of death, which men always behold in diſtant obſcurity.

The terrors of death make ſo ſlight an impreſſion, that it has not force enough to withſtand the forgetfulneſs natural to mankind, even in the moſt eſſential things; eſpecially when aſſiſted by the paſſions. Violent impreſſions ſurprize us, but their effect is momentary; they are fit to produce thoſe revolutions which inſtantly transform a common man into a Lacedæmonian or a Perſian; but in a free and quiet government they ought to be rather frequent than ſtrong.

The execution of a criminal is, to the multitude, a ſpectacle which in ſome excites compaſſion mixed with indignation. Theſe ſentiments occupy the mind much more than that ſalutary terror which the laws endeavour to inſpire; but in the contemplation of continued ſuffering, terror is the only, or, at leaſt, the predominant ſenſation. The ſeverity of a puniſhment ſhould be juſt ſufficient to excite compaſſion in the ſpectators, as it is intended more for them than for the criminal.

A puniſhment, to be juſt, ſhould have only that degree of ſeverity which is ſufficient to deter others. Now there is no man, who, upon the leaſt reflection, would put in competition the

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total and perpetual loſs of his liberty, with the greateſt advantages he could poſſibly obtain in conſequence of a crime. Perpetual ſlavery, then, has in it all that is neceſſary to deter the moſt hardened and determined, as much as the puniſhment of death. I ſay, it has more. There are many who can look upon death with intrepidity and firmneſs; ſome through fanaticiſm, and others through vanity, which attends us even to the grave; others from a deſperate reſolution, either to get rid of their miſery, or ceaſe to live: but fanaticiſm and vanity forſake the criminal in ſlavery, in chains and fetters, in an iron cage; and deſpair ſeems rather the beginning than the end of their miſery. The mind, by collecting itſelf and uniting all its force, can, for a moment, repel aſſailing grief; but its moſt vigorous efforts are inſufficient to reſiſt perpetual wretchedneſs.

In all nations, where death is uſed as puniſhment, every example ſuppoſes a new crime committed. Whereas, in perpetual ſlavery, every criminal affords a frequent and laſting example; and if it be neceſſary that men ſhould often be witneſſes of the power of the laws, criminals ſhould often be put to death; but this ſuppoſes a frequency of crimes; and from hence this

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puniſhment will ceaſe to have its effect, ſo that it muſt be uſeful and uſeleſs at the ſame time.

I ſhall be told, that perpetual ſlavery is as painful a puniſhment as death, and therefore as cruel. I anſwer, that if all the miſerable moments in the life of a ſlave were collected into one point, it would be a more cruel puniſhment than any other; but theſe are ſcattered through his whole life, whilſt the pain of death exerts all its force in a moment. There is alſo another advantage in the puniſhment of ſlavery, which is, that it is more terrible to the ſpectator than to the ſufferer himſelf; for the ſpectator conſiders the ſum of all his wretched moments, whilſt the ſufferer, by the miſery of the preſent, is prevented from thinking of the future. All evils are increaſed by the imagination, and the ſufferer finds reſources and conſolations, of which the ſpectators are ignorant; who judge by their own ſenſibility of what paſſes in a mind by habit grown callous to misfortune.

Let us, for a moment, attend to the reaſoning of a robber or aſſaſſin, who is deterred from violating the laws by the gibbet or the wheel. I am ſenſible, that to develop the ſentiments of one's own heart, is an art which education only can teach; but although a villain may not be able to give a clear account of his principles,

they nevertheleſs influence his conduct. He reaſons thus: "What are theſe laws that I am "bound to reſpect, which make ſo great a dif- "ference between me and the rich man? He "refuſes me the farthing I aſk of him, and "excuſes himſelf by bidding me have recourſe "to labour, with which he is unacquainted. "Who made theſe laws? The rich and the "great, who never deigned to viſit the miſer- "able hut of the poor; who have never ſeen "him dividing a piece of mouldy bread, amidſt "the cries of his famiſhed children, and the "tears of his wife. Let us break thoſe ties, "fatal to the greateſt part of mankind, and "only uſeful to a few indolent tyrants. Let us "attack injuſtice at its ſource. I will return to "my natural ſtate of independence. I ſhall live "free and happy on the fruits of my courage "and induſtry. A day of pain and repentance "may come, but it will be ſhort; and for "an hour of grief I ſhall enjoy years of plea- "ſure and liberty. King of a ſmall number, "as determined as myſelf, I will correct the "miſtakes of fortune; and ſhall ſee thoſe ty- "rants grow pale and tremble at the ſight of "him, whom, with inſulting pride, they would "not ſuffer to rank with dogs and horſes."

Religion

Religion then presents itself to the mind of this lawless villain, and promising him almost a certainty of eternal happiness upon the easy terms of repentance, contributes much to lessen the horror of the last scene of the tragedy.

But he who foresees, that he must pass a great number of years, even his whole life, in pain and slavery; a slave to those laws by which he was protected; in sight of his fellow citizens, with whom he lives in freedom and society; makes an useful comparison between those evils, the uncertainty of his success, and the shortness of the time in which he shall enjoy the fruits of his transgression. The example of those wretches continually before his eyes, makes a much greater impression on him than a punishment, which, instead of correcting, makes him more obdurate.

The punishment of death is pernicious to society, from the example of barbarity it affords. If the passions, or the necessity of war, have taught men to shed the blood of their fellow-creatures, the laws which are intended to moderate the ferocity of mankind, should not increase it by examples of barbarity, the more horrible, as this punishment is usually attended with formal pageantry. Is it not absurd, that the laws, which detest and punish homicide,

ſhould, in order to prevent murder, publicly commit murder themſelves? What are the true and moſt uſeful laws? Thoſe compacts and conditions which all would propoſe and obſerve, in thoſe moments when private intereſt is ſilent, or combined with that of the public. What are the natural ſentiments of every perſon concerning the puniſhment of death? We may read them in the contempt and indignation with which every one looks on the executioner, who is nevertheleſs an innocent executor of the public will; a good citizen, who contributes to the advantage of ſociety; the inſtrument of the general ſecurity within, as good ſoldiers are without. What then is the origin of this contradiction? Why is this ſentiment of mankind indelible to the ſcandal of reaſon? It is, that in a ſecret corner of the mind, in which the original impreſſions of nature are ſtill preſerved, men diſcover a ſentiment which tells them, that their lives are not lawfully in the power of any one, but of that neceſſity only, which with its iron ſceptre rules the univerſe.

What muſt men think, when they ſee wiſe magiſtrates and grave miniſters of juſtice, with indifference and tranquillity, dragging a criminal to death, and whilſt a wretch trembles with agony, expecting the fatal ſtroke, the judge, who

who has condemned him, with the coldeſt inſenſibility, and perhaps with no ſmall gratification from the exertion of his authority, quits his tribunal to enjoy the comforts and pleaſures of life? They will ſay, "Ah! thoſe cruel formalities of juſtice are a cloak to tyranny, they are "a ſecret language, a ſolemn veil, intended to "conceal the ſword by which we are ſacrificed "to the inſatiable idol of deſpotiſm. Murder, "which they would repreſent to us as an horrible crime, we ſee practiſed by them without "repugnance or remorſe. Let us follow their "example. A violent death appeared terrible "in their deſcriptions, but we ſee that it is the "affair of a moment. It will be ſtill leſs terrible "to him, who, not expecting it, eſcapes almoſt "all the pain." Such is the fatal, though abſurd reaſoning of men who are diſpoſed to commit crimes; on whom the abuſe of religion has more influence than religion itſelf.

If it be objected, that almoſt all nations in all ages have puniſhed certain crimes with death, I anſwer, that the force of theſe examples vaniſhes, when oppoſed to truth, againſt which preſcription is urged in vain. The hiſtory of mankind is an immenſe ſea of errors, in which a few obſcure truths may here and there be found.

But human ſacrifices have alſo been common in almoſt all nations. That ſome ſocieties only, either few in number, or for a very ſhort time, abſtained from the puniſhment of death, is rather favourable to my argument, for ſuch is the fate of great truths, that their duration is only as a flaſh of lightning in the long and dark night of error. The happy time is not yet arrived, when truth, as falſhood has been hitherto, ſhall be the portion of the greateſt number.

I am ſenſible that the voice of one philoſopher is too weak to be heard amidſt the clamours of a multitude, blindly influenced by cuſtom; but there is a ſmall number of ſages, ſcattered on the face of the earth, who will echo to me from the bottom of their hearts; and if theſe truths ſhould haply force their way to the thrones of princes, be it known to them, that they come attended with the ſecret wiſhes of all mankind; and tell the ſovereign, who deigns them a gracious reception, that his fame ſhall outſhine the glory of conquerors, and that equitable poſterity will exalt his peaceful trophies above thoſe of a Titus, an Antoninus, or a Trajan.

How happy were mankind, if laws were now to be firſt formed! now that we ſee on the thrones of Europe benevolent monarchs, friends to the virtues of peace, to the arts and ſciences,

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fathers of their people, though crowned yet citizens; the increaſe of whoſe authority augments the happineſs of their ſubjects, by deſtroying that intermediate deſpotiſm, which intercepts the prayers of the people to the throne. If theſe humane princes have ſuffered the old laws to ſubſiſt, it is doubtleſs becauſe they are deterred by the numberleſs obſtacles which oppoſe the ſubverſion of errors eſtabliſhed by the ſanction of many ages; and therefore every wiſe citizen will wiſh for the increaſe of their authority.

CHAP.

CHAP. XXIX.

Of Imprisonment.

THAT a magistrate, the executor of the laws, should have a power to imprison a citizen, to deprive the man he hates of his liberty upon frivolous pretences, and to leave his friend unpunished, notwithstanding the strongest proofs of his guilt, is an error as common as it is contrary to the end of society, which is personal security.

Imprisonment is a punishment, which differs from all others in this particular, that it necessarily precedes conviction; but this difference does not destroy a circumstance, which is essential, and common to it with all other punishments, *viz.* that it should never be inflicted, but when ordained by the law. The law should, therefore, determine the crime, the presumption, and the evidence sufficient to subject the accused to imprisonment and examination. Public report, his flight, his extra-judicial confession, that of an accomplice, menaces, and his constant enmity with the person injured, the circumstances of the crime, and such other evidence,

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may be ſufficient to juſtify the impriſonment of a citizen. But the nature of this evidence ſhould be determined by the laws, and not by the magiſtrates, whoſe decrees are always contrary to political liberty, when they are not particular applications of a general maxim of the public code. When puniſhments become leſs ſevere, and priſons leſs horrible; when compaſſion and humanity ſhall penetrate the iron gates of dungeons, and direct the obdurate and inexorable miniſters of juſtice, the laws may then be ſatisfied with weaker evidence for impriſonment.

A perſon accuſed, impriſoned, tried and acquitted, ought not to be branded with any degree of infamy. Among the Romans, we ſee that many, accuſed of very great crimes, and afterwards declared innocent, were reſpected by the people, and honoured with employments in the ſtate. But why is the fate of an innocent perſon ſo different in this age? It is, becauſe the preſent ſyſtem of penal laws preſents to our minds an idea of power rather than of juſtice. It is, becauſe the accuſed and convicted are thrown indiſcriminately into the ſame priſon; becauſe impriſonment is rather a puniſhment, than a means of ſecuring the perſon of the accuſed; and becauſe the interior power, which defends the laws, and the exterior, which de-

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fends the throne and kingdom, are ſeparate when they ſhould be united. If the firſt were (under the common authority of the laws) combined with the right of judging, but not however immediately dependent on the magiſtrate, the pomp that attends a military corps, would take off the infamy; which, like all popular opinions, is more attached to the manner and form, than to the thing itſelf; as may be ſeen in military impriſonment, which, in the common opinion, is not ſo diſgraceful as the civil. But the barbarity and ferocity of our anceſtors, the hunters of the north, ſtill ſubſiſt among the people, in our cuſtoms and our laws, which are always ſeveral ages behind the actual refinements of a nation.

CHAP.

CHAP. XXX.

Of Profecution and Prefcription.

THE proofs of the crime being obtained, and the certainty of it determined, it is neceſſary to allow the criminal the time and means for his juſtification; but a time ſo ſhort, as not to diminiſh that promptitude of puniſhment, which, as we have ſhewn, is one of the moſt powerful means of preventing crimes. A miſtaken humanity may object to the ſhortneſs of the time, but the force of the objection will vaniſh, if we conſider that the danger of the innocent increaſes with the defects of the legiſlation.

The time for inquiry and for juſtification ſhould be fixed by the laws, and not by the judge, who, in that caſe, would become legiſlator. With regard to atrocious crimes, which are long remembered, when they are once proved, if the criminal have fled, no time ſhould be allowed; but in leſs conſiderable and more obſcure crimes, a time ſhould be fixed, after which the delinquent ſhould be no longer uncertain of his fate. For in the latter caſe, the length of time, in which the crime is almoſt forgotten,

forgotten, prevents the example of impunity, and allows the criminal to amend, and become a better member of ſociety.

General principles will here be ſufficient, it being impoſſible to fix preciſely the limits of time for any given legiſlation, or for any ſociety in any particular circumſtance. I ſhall only add, that in a nation willing to prove the utility of moderate puniſhment, laws which, according to the nature of the crime, increaſe or diminiſh the time of inquiry and juſtification, conſidering the impriſonment or the voluntary exile of the criminal as a part of the puniſhment, will form an eaſy diviſion of a ſmall number of mild puniſhments for a great number of crimes.

But, it muſt be obſerved, the time for inquiry and juſtification ſhould not increaſe in direct proportion to the atrociouſneſs of crimes; for the probability of ſuch crimes having been committed, is inverſely as their atrociouſneſs. Therefore the time for inquiring ought, in ſome caſes, to be diminiſhed, and that for juſtification increaſed, & *vice verſa*. This may appear to contradict what I have ſaid above, namely, that equal puniſhments may be decreed for unequal crimes, by conſidering the time allowed the criminal, or the priſon, as a puniſhment.

In order to explain this idea, I ſhall divide crimes into two claſſes. The firſt comprehends homicide, and all greater crimes; the ſecond, crimes of an inferior degree. This diſtinction is founded in human nature. The preſervation of life is a natural right; the preſervation of property is a right of ſociety. The motives that induce men to ſhake off the natural ſentiment of compaſſion, which muſt be deſtroyed before great crimes can be committed, are much leſs in number than thoſe by which, from the natural deſire of being happy, they are inſtigated to violate a right, which is not founded in the heart of man, but is the work of ſociety. The different degrees of probability in theſe two claſſes, requires that they ſhould be regulated on different principles. In the greateſt crimes, as they are leſs frequent, and the probability of the innocence of the accuſed being greater, the time allowed him for his juſtification ſhould be greater, and the time of inquiry leſs. For by haſtening the definitive ſentence, the flattering hopes of impunity are deſtroyed, which are more dangerous, as the crime is more atrocious. On the contrary, in crimes of leſs importance, the probability of the innocence being leſs, the time of inquiry ſhould be greater, and that of juſtification leſs, as impunity is not ſo dangerous.

But this diviſion of crimes into two claſſes ſhould not be admitted, if the conſequences of impunity were in proportion to the probability of the crime. It ſhould be conſidered, that a perſon accuſed, whoſe guilt or innocence is not determined for want of proofs, may be again impriſoned for the ſame crime, and be ſubject to a new trial, if freſh evidence ariſes within the time fixed.

This is, in my opinion, the beſt method of providing at the ſame time for the ſecurity and liberty of the ſubject, without favouring one at the expence of the other; which may eaſily happen, ſince both theſe bleſſings, the inalienable and equal patrimony of every citizen, are liable to be invaded, the one by open or diſguiſed deſpotiſm, and the other by tumultuous and popular anarchy.

CHAP.

CHAP. XXXI.

Of Crimes of difficult Proof.

WITH the foregoing principles in view, it will appear aſtoniſhing, that reaſon hardly ever preſided at the formation of the laws of nations; that the weakeſt and moſt equivocal evidence, and even conjectures, have been thought ſufficient proof for crimes the moſt atrocious, (and therefore moſt improbable), the moſt obſcure and chimerical; as if it were the intereſt of the laws and the judge not to inquire into the truth, but to prove the crime; as if there were not a greater riſk of condemning an innocent perſon, when the probability of his guilt is leſs.

The generality of men want that vigour of mind and reſolution, which are as neceſſary for great crimes as for great virtues, and which at the ſame time produce both the one and the other, in thoſe nations which are ſupported by the activity of their government, and a paſſion for the public good. For in thoſe which ſubſiſt by their greatneſs or power, or by the goodneſs of their laws, the paſſions being in a weaker degree, ſeem calculated rather to maintain than to

improve the form of government. This naturally leads us to an important concluſion, *viz.* that great crimes do always produce the deſtruction of a nation.

There are ſome crimes which, though frequent in ſociety, are of difficult proof, a circumſtance admitted, as equal to the probability of the innocence of the accuſed. But as the frequency of theſe crimes is not owing to their impunity, ſo much as to other cauſes, the danger of their paſſing unpuniſhed is of leſs importance, and therefore the time of examination and preſcription may be equally diminiſhed. Theſe principles are different from thoſe commonly received; for it is in crimes, which are proved with the greateſt difficulty, ſuch as adultery, and ſodomy, that preſumptions, half-proofs, *&c.* are admitted; as if a man could be half innocent, and half guilty; that is, half puniſhable and half abſolvable. It is in theſe caſes that torture ſhould exerciſe its cruel power on the perſon of the accuſed, the witneſſes, and even his whole family, as, with unfeeling indifference, ſome civilians have taught, who pretend to dictate laws to nations.

Adultery is a crime which, politically conſidered, owes its exiſtence to two cauſes, *viz.* pernicious laws, and the powerful attraction be-

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tween the ſexes. This attraction is ſimilar in many circumſtances to gravity, the ſpring of motion in the univerſe. Like this, it is diminiſhed by diſtance; one regulates the motions of the body, the other of the ſoul. But they differ in one reſpect; the force of gravity decreaſes in proportion to the obſtacles that oppoſe it; the other gathers ſtrength and vigour as the obſtacles increaſe.

If I were ſpeaking to nations guided only by the laws of nature, I would tell them, that there is a conſiderable difference between adultery and all other crimes. Adultery proceeds from an abuſe of that neceſſity which is conſtant and univerſal in human nature; a neceſſity anterior to the formation of ſociety, and indeed the founder of ſociety itſelf; whereas, all other crimes tend to the deſtruction of ſociety, and ariſe from momentary paſſions, and not from a natural neceſſity. It is the opinion of thoſe, who have ſtudied hiſtory and mankind, that this neceſſity is conſtantly in the ſame degree in the ſame climate. If this be true, uſeleſs, or rather pernicious muſt all laws and cuſtoms be, which tend to diminiſh the ſum total of the effects of this paſſion. Such laws would only burden one part of ſociety with the additional neceſſities of the other, but, on the contrary, wiſe are the

laws which, following the natural courſe of the river, divide the ſtream into a number of equal branches, preventing thus both ſterility and inundation.

Conjugal fidelity is always greater in proportion as marriages are more numerous, and leſs difficult. But when the intereſt or pride of families, or paternal authority, not the inclination of the parties, unite the ſexes, gallantry ſoon breaks the ſlender ties, in ſpite of common moraliſts, who exclaim againſt the effect, whilſt they pardon the cauſe. But theſe reflections are uſeleſs to thoſe, who, living in the true religion, act from ſublimer motives, which correct the eternal laws of nature.

The act of adultery is a crime ſo inſtantaneous, ſo myſterious, and ſo concealed by the veil which the laws themſelves have woven; a veil neceſſary indeed, but ſo tranſparent, as to heighten rather than conceal the charms of the object; the opportunities are ſo frequent, and the danger of diſcovery ſo eaſily avoided, that it were much eaſier for the laws to prevent this crime, than to puniſh it when committed.

To every crime, which from its nature muſt frequently remain unpuniſhed, the puniſhment is an incentive. Such is the nature of the human mind, that difficulties, if not inſurmount-

able,

able, nor too great for our natural indolence, embelliſh the object, and ſpur us on to the purſuit. They are ſo many barriers that confine the imagination to the object, and oblige us to conſider it in every point of view. In this agitation, the mind naturally inclines and fixes itſelf to the moſt agreeable part, ſtudiouſly avoiding every idea that might create diſguſt.

The crime of ſodomy, ſo ſeverely puniſhed by the laws, and for the proof of which are employed tortures, which often triumph over innocence itſelf, has its ſource much leſs in the paſſions of man in a free and independent ſtate, than in ſociety and a ſlave. It is much leſs the effect of a ſatiety in pleaſures, than of that education, which, in order to make men uſeful to others, begins by making them uſeleſs to themſelves. In thoſe public ſeminaries, where ardent youth are carefully excluded from all commerce with the other ſex, as the vigour of nature blooms, it is conſumed in a manner not only uſeleſs to mankind, but which accelerates the approach of old age.

The murder of baſtard children is, in like manner, the effect of a cruel dilemma, in which a woman finds herſelf who has been ſeduced through weakneſs, or overcome by force. The alternative is, her own infamy, or the death of a being

a being who is incapable of feeling the loſs of life. How can ſhe avoid preferring the laſt to the inevitable miſery of herſelf and her unhappy infant! The beſt method of preventing this crime, would be effectually to protect the weak woman from that tyranny which exaggerates all vices that cannot be concealed under the the cloak of virtue.

I do not pretend to leſſen that juſt abhorrence which theſe crimes deſerve, but to diſcover the ſources from whence they ſpring; and I think I may draw the following concluſions: *That the puniſhment of a crime cannot be juſt, (that is, neceſſary), if the laws have not endeavoured to prevent that crime by the beſt means which times and circumſtances would allow.*

CHAP.

CHAP. XXXII.

Of Suicide.

SUICIDE is a crime, which ſeems not to admit of puniſhment, properly ſpeaking; for it cannot be inflicted but on the innocent, or upon an inſenſible dead body. In the firſt caſe, it is unjuſt and tyrannical, for political liberty ſuppoſes all puniſhments entirely perſonal; in the ſecond, it has the ſame effect, by way of example, as the ſcourging a ſtatue. Mankind love life too well; the objects that ſurround them; the ſeducing phantom of pleaſure and hope, that ſweeteſt error of mortals, which makes men ſwallow ſuch large draughts of evil, mingled with a very few drops of good, allure them too ſtrongly, to apprehend that this crime will ever be common from its unavoidable impunity. The laws are obeyed through fear of puniſhment, but death deſtroys all ſenſibility. What motive then can reſtrain the deſperate hand of ſuicide?

He who kills himſelf does a leſs injury to ſociety, than he who quits his country for ever; for the other leaves his property behind him, but this carries with him at leaſt a part of his ſubſtance.

ſubſtance. Beſides, as the ſtrength of a ſociety conſiſts in the number of citizens, he who quits one nation to reſide in another, becomes a double loſs. This then is the queſtion: whether it be advantageous to ſociety, that its members ſhould enjoy the unlimited privilege of migration?

Every law that is not armed with force, or which, from circumſtances, muſt be ineffectual, ſhould not be promulgated. Opinion, which reigns over the minds of men, obeys the ſlow and indirect impreſſions of the legiſlator, but reſiſts them when violently and directly applied; and uſeleſs laws communicate their inſignificance to the moſt ſalutary, which are regarded more as obſtacles to be ſurmounted, than as ſafeguards of the public good. But further, our perceptions being limited, by enforcing the obſervance of laws which are evidently uſeleſs, we deſtroy the influence of the moſt ſalutary.

From this principle, a wiſe diſpenſer of public happineſs may draw ſome uſeful conſequences, the explanation of which would carry me too far from my ſubject, which is to prove the inutility of making the nation a priſon. Such a law is vain, becauſe, unleſs inacceſſible rocks, or impaſſable ſeas, divide the country from all others, how will it be poſſible to ſecure every

point

point of the circumference, or how will you guard the guards themſelves? Beſides, this crime, once committed, cannot be puniſhed; and to puniſh it before hand, would be to puniſh the intention and not the action; the will, which is entirely out of the power of human laws. To puniſh the abſent by confiſcating his effects, beſides the facility of colluſion, which would inevitably be the caſe, and which, without tyranny, could not be prevented, would put a ſtop to all commerce with other nations. To puniſh the criminal when he returns, would be to prevent him from repairing the evil he had already done to ſociety, by making his abſence perpetual. Beſides, any prohibition would increaſe the deſire of removing, and would infallibly prevent ſtrangers from ſettling in the country.

What muſt we think of a government which has no means, but fear, to keep its ſubjects in their own country; to which, by the firſt impreſſions of their infancy, they are ſo ſtrongly attached. The moſt certain method of keeping men at home, is, to make them happy; and it is the intereſt of every ſtate to turn the balance, not only of commerce, but of felicity, in favour of its ſubjects. The pleaſures of luxury are not the principal ſources of this happineſs; though,

by

by preventing the too great accumulation of wealth in few hands, they become a neceſſary remedy againſt the too great inequality of individuals, which always increaſes with the progreſs of ſociety.

When the populouſneſs of a country does not increaſe in proportion to its extent, luxury favours deſpotiſm, for where men are moſt diſperſed, there is leaſt induſtry, the dependence of the poor upon the luxury of the rich is greateſt, and the union of the oppreſſed againſt the oppreſſors is leaſt to be feared. In ſuch circumſtances, rich and powerful men more eaſily command diſtinction, reſpect and ſervice, by which they are raiſed to a greater height above the poor; for men are more independent the leſs they are obſerved, and are leaſt obſerved when moſt numerous. On the contrary, when the number of people is too great in proportion to the extent of a country, luxury is a check to deſpotiſm; becauſe it is a ſpur to induſtry, and becauſe the labour of the poor affords ſo many pleaſures to the rich, that they diſregard the luxury of oſtentation, which would remind the people of their dependence. Hence we ſee, that in vaſt and depopulated ſtates, the luxury of oſtentation prevails over that of convenience; but, in the countries more populous, the luxury of convenience tends conſtantly to diminiſh the luxury of oſtentation.

The pleaſures of luxury have this inconvenience, that though they employ a great number of hands, yet they are only enjoyed by a few, whilſt the reſt, who do not partake of them, feel the want more ſenſibly, on comparing their ſtate with that of others. Security and liberty, reſtrained by the laws, are the baſis of happineſs, and when attended by theſe, the pleaſures of luxury favour population, without which they become the inſtrument of tyranny. As the moſt noble and generous animals fly to ſolitude and inacceſſible deſerts, and abandon the fertile plains to man, their greateſt enemy; ſo men reject pleaſure itſelf, when offered by the hand of tyranny.

But to return. If it be demonſtrated, that the laws which impriſon men in their own country are vain and unjuſt, it will be equally true of thoſe which puniſh ſuicide, for that can only be puniſhed after death, which is in the power of God alone; but it is no crime, with regard to man, becauſe the puniſhment falls on an innocent family. If it be objected, that the conſideration of ſuch a puniſhment may prevent the crime; I anſwer, that he who can calmly renounce the pleaſure of exiſtence; who is ſo weary of life as to brave the idea of eternal miſery, will never be influenced by the more diſtant and leſs powerful conſiderations of family and children.

CHAP. XXXIII.

Of Smuggling.

SMUGGLING is a real offence againſt the ſovereign and the nation; but the puniſhment ſhould not brand the offender with infamy, becauſe this crime is not infamous in the public opinion. By inflicting infamous puniſhments, for crimes that are not reputed ſo, we deſtroy that idea where it may be uſeful. If the ſame puniſhment be decreed for killing a pheaſant as for killing a man, or for forgery, all difference between thoſe crimes will ſhortly vaniſh. It is thus that moral ſentiments are deſtroyed in the heart of man; ſentiments, the work of many ages and of much bloodſhed; ſentiments, that are ſo ſlowly, and with ſo much difficulty, produced, and for the eſtabliſhment of which ſuch ſublime motives, and ſuch an apparatus of ceremonies, were thought neceſſary.

This crime is owing to the laws themſelves; for the higher the duties, the greater is the advantage, and, conſequently, the temptation; which temptation is increaſed by the facility of perpetration, when the circumference that is guarded

guarded is of great extent, and the merchandiſe prohibited is ſmall in bulk. The ſeizure and loſs of the goods attempted to be ſmuggled, together with thoſe that are found along with them, is juſt; but it would be better to leſſen the duty, becauſe men riſque only in proportion to the advantage expected.

This crime being a theft of what belongs to the prince, and conſequently to the nation, why is it not attended with infamy? I anſwer, that crimes, which men conſider as productive of no bad conſequences to themſelves, do not intereſt them ſufficiently to excite their indignation. The generality of mankind, upon whom remote conſequences make no impreſſion, do not ſee the evil that may reſult from the practice of ſmuggling, eſpecially if they reap from it any preſent advantage. They only perceive the loſs ſuſtained by the prince. They are not then intereſted in refuſing their eſteem to the ſmuggler, as to one who has committed a theft or a forgery, or other crimes, by which they themſelves may ſuffer; from this evident principle, that a ſenſible being only intereſts himſelf in thoſe evils with which he is acquainted.

Shall this crime, then, committed by one who has nothing to loſe, go unpuniſhed? No. There are certain ſpecies of ſmuggling, which ſo parti-

cularly affect the revenue, a part of government ſo eſſential, and managed with ſo much difficulty, that they deſerve impriſonment, or even ſlavery; but yet of ſuch a nature as to be proportioned to the crime. For example, it would be highly unjuſt that a ſmuggler of tobacco ſhould ſuffer the ſame puniſhment with a robber or aſſaſſin; but it would be moſt conformable to the nature of the offence, that the produce of his labour ſhould be applied to the uſe of the crown, which he intended to defraud.

CHAP.

CHAP. XXXIV.

Of Bankrupts.

THE neceſſity of good faith in contracts and the ſupport of commerce, oblige the legiſlature to ſecure, for the creditors, the perſons of bankrupts. It is, however, neceſſary to diſtinguiſh between the fraudulent and the honeſt bankrupt. The fraudulent bankrupt ſhould be puniſhed in the ſame manner with him who adulterates the coin; for to falſify a piece of coin, which is a pledge of the mutual obligations between citizens, is not a greater crime than to violate the obligations themſelves. But the bankrupt who, after a ſtrict examination, has proved before proper judges, that either the fraud or loſſes of others, or misfortunes unavoidable by human prudence, have ſtript him of his ſubſtance; upon what barbarous pretence is he thrown into priſon, and deprived of the only remaining good, the melancholy enjoyment of mere liberty? Why is he ranked with criminals, and in deſpair compelled to repent of his honeſty? Conſcious of his innocence, he lived eaſy and happy under the protection of thoſe laws, which, it is true, he violated, but not intentionally.

Laws, dictated by the avarice of the rich, and accepted by the poor, ſeduced by that univerſal flattering hope which makes men believe, that all unlucky accidents are the lot of others, and the moſt fortunate only their ſhare. Mankind, when influenced by the firſt impreſſions, love cruel laws, although, being ſubject to them themſelves, it is the intereſt of every perſon that they ſhould be as mild as poſſible; but the fear of being injured is always more prevalent than the intention of injuring others.

But to return to the honeſt bankrupt. Let his debt, if you will, not be conſidered as cancelled till the payment of the whole; let him be refuſed the liberty of leaving the country without leave of his creditors, or of carrying into another nation that induſtry which, under a penalty, he ſhould be obliged to employ for their benefit; but what pretences can juſtify the depriving an innocent, though unfortunate man of his liberty, without the leaſt utility to his creditors?

But, ſay they, the hardſhips of confinement will induce him to diſcover his fraudulent tranſactions; an event that can hardly be ſuppoſed, after a rigorous examination of his conduct and affairs. But if they are not diſcovered, he will eſcape unpuniſhed. It is, I think, a maxim of

govern-

government, that the importance of the political inconveniences, arising from the impunity of a crime, are directly as the injury to the public, and inversely as the difficulty of proof.

It will be necessary to distinguish fraud, attended with aggravating circumstances, from simple fraud, and that from perfect innocence. For the first, let there be ordained the same punishment as for forgery; for the second, a less punishment but with the loss of liberty; and if perfectly honest, let the bankrupt himself chuse the method of re-establishing himself, and of satisfying his creditors; or if he should appear not to have been strictly honest, let that be determined by his creditors: but these distinctions should be fixed by the laws, which alone are impartial, and not by the arbitrary and dangerous prudence of judges *.

With

* It may be alledged, that the interest of commerce and property should be secured; but commerce and property are not the end of the social compact, but the means of obtaining that end; and to oppose all the members of society to cruel laws, to preserve them from evils, necessarily occasioned by the infinite combinations which result from the actual state of political societies, would be to make the end subservient to the means, a paralogism in all sciences, and particularly in politics. In the former editions of this work, I myself fell into this error, when I said that the honest bankrupt should be kept in custody, as a pledge for his debts, or employed as

With what eaſe might a ſagacious legiſlator prevent the greateſt part of fraudulent bankruptcies, and remedy the misfortunes that befal the honeſt and induſtrious! A public regiſter of all contracts, with the liberty of conſulting it, allowed to every citizen; a public fund formed by a contribution of the opulent merchants for the timely aſſiſtance of unfortunate induſtry, were eſtabliſhments that could produce no real inconveniences, and many advantages. But unhappily the moſt ſimple, the eaſieſt, yet the wiſeſt laws, that wait only for the nod of the legiſlator, to diffuſe through nations wealth, power, and felicity; laws which would be regarded by future generations with eternal gratitude, are either unknown, or rejected. A reſtleſs and trifling ſpirit, the timid prudence of the preſent moment, a diſtruſt and averſion to the moſt uſeful novelties, poſſeſs the minds of thoſe who are empowered to regulate the actions of mankind.

as a ſlave to work for his creditors. I am aſhamed of having adopted ſo cruel an opinion. I have been accuſed of impiety; I did not deſerve it. I have been accuſed of ſedition; I deſerved it as little. But I inſulted all the rights of humanity, and was never reproached.

CHAP.

CHAP. XXXV.

Of Sanctuaries.

ARE ſanctuaries juſt? Is a convention between nations, mutually to give up their criminals, uſeful?

In the whole extent of a political ſtate, there ſhould be no place independent of the laws. Their power ſhould follow every ſubject, as the ſhadow follows the body. Sanctuaries, and impunity, differ only in degree, and as the effect of puniſhments depends more on their certainty, than their greatneſs, men are more ſtrongly invited to crimes by ſanctuaries, than they are deterred by puniſhment. To increaſe the number of ſanctuaries, is to erect ſo many little ſovereignties; for, when the laws have no power, new bodies will be formed in oppoſition to the public good, and a ſpirit eſtabliſhed contrary to that of the ſtate. Hiſtory informs us, that from the uſe of ſanctuaries have ariſen the greateſt revolutions in kingdoms, and in opinions.

Some have pretended, that in whatever country a crime, that is, an action contrary to the laws of ſociety, be committed, the criminal may be

be juſtly puniſhed for it in any other; as if the character of ſubject were indelible, or ſynonimous with, or worſe than that of ſlave; as if a man could live in one country, and be ſubject to the laws of another, or be accountable for his actions to two ſovereigns, or two codes of laws, often contradictory. There are alſo who think, that an act of cruelty committed, for example, at Conſtantinople may be puniſhed at Paris; for this abſtracted reaſon, that he who offends humanity, ſhould have enemies in all mankind, and be the object of univerſal execration; as if judges were to be the knights-errant of human nature in general, rather than guardians of particular conventions between men. The place of puniſhment can certainly be no other, than that where the crime was committed; for the neceſſity of puniſhing an individual for the general good ſubſiſts there, and there only. A villain, if he has not broke through the conventions of a ſociety of which, by my ſuppoſition, he was not a member, may be feared, and by force baniſhed and excluded from that ſociety; but ought not to be formally puniſhed by the laws, which were only intended to maintain the ſocial compact, and not to puniſh the intrinſic malignity of actions.

Whether

Whether it be uſeful that nations ſhould mutually deliver up their criminals? Although the certainty of there being no part of the earth where crimes are not puniſhed, may be a means of preventing them, I ſhall not pretend to determine this queſtion, until laws more conformable to the neceſſities and rights of humanity, and until milder puniſhments, and the abolition of the arbitrary power of opinion, ſhall afford ſecurity to virtue and innocence when oppreſſed; and until tyranny ſhall be confined to the plains of Aſia, and Europe acknowledge the univerſal empire of reaſon, by which the intereſts of ſovereigns and ſubjects are beſt united.

CHAP.

CHAP. XXXVI.

Of Rewards for apprehending, or killing Criminals.

LET us now inquire, whether it be advantageous to ſociety, to ſet a price on the head of a criminal, and ſo to make of every citizen an executioner. If the offender hath taken refuge in another ſtate, the ſovereign encourages his ſubjects to commit a crime, and to expoſe themſelves to a juſt puniſhment; he inſults that nation, and authoriſes the ſubjects to commit on their neighbours ſimilar uſurpations. If the criminal ſtill remain in his own country, to ſet a price upon his head, is the ſtrongeſt proof of the weakneſs of the government. He who has ſtrength to defend himſelf, will not purchaſe the aſſiſtance of another. Beſides, ſuch an edict confounds all the ideas of virtue and morality, already too wavering in the mind of man. At one time treachery is puniſhed by the laws, at another encouraged. With one hand the legiſlator ſtrengthens the ties of kindred and friendſhip, and with the other rewards the violation of both. Always in contradiction with

himſelf, now he invites the ſuſpecting minds of men to mutual confidence, and now he plants diſtruſt in every heart. To prevent one crime, he gives birth to a thouſand. Such are the expedients of weak nations, whoſe laws are like temporary repairs to a tottering fabric. On the contrary, as a nation becomes more enlightened, honeſty and mutual confidence become more neceſſary, and are daily tending to unite with ſound policy. Artifice, cabal, and obſcure and indirect actions are more eaſily diſcovered, and the intereſt of the whole is better ſecured againſt the paſſions of the individual.

Even the times of ignorance, when private virtue was encouraged by public morality, may afford inſtruction and example to more enlightened ages. But laws which reward treaſon, excite clandeſtine war, and mutual diſtruſt, oppoſe that neceſſary union of morality and policy, which is the foundation of happineſs, and univerſal peace.

CHAP. XXXVII.

Of Attempts, Accomplices, and Pardon.

THE laws do not puniſh the intention; nevertheleſs an attempt, which manifeſts the intention of committing a crime, deſerves a puniſhment, though leſs, perhaps, than if the crime were actually perpetrated. The importance of preventing even attempts to commit a crime ſufficiently authoriſes a puniſhment; but as there may be an interval of time between the attempt and the execution, it is proper to reſerve the greater puniſhment for the actual commiſſion, that even after the attempt there may be a motive for deſiſting.

In like manner, with regard to the accomplices, they ought not to ſuffer ſo ſevere a puniſhment as the immediate perpetrator of the crime. But this for a different reaſon. When a number of men unite, and run a common riſk, the greater the danger, the more they endeavour to diſtribute it equally. Now, if the principals be puniſhed more ſeverely than the acceſſaries, it will prevent the danger from being equally divided, and will increaſe the difficulty of finding a perſon to execute the crime, as his danger is greater

greater by the difference of the puniſhment. There can be but one exception to this rule; and that is, when the principal receives a reward from the accomplices. In that caſe, as the difference of the danger is compenſated, the puniſhment ſhould be equal. Theſe reflections may appear too refined to thoſe who do not conſider, that it is of great importance, that the laws ſhould leave the aſſociates as few means as poſſible of agreeing among themſelves.

In ſome tribunals, a pardon is offered to an accomplice in a great crime, if he diſcover his aſſociates. This expedient has its advantages. The diſadvantages are, that the law authoriſes treachery, which is deteſted even by the villains themſelves; and introduces crimes of cowardice, which are much more pernicious to a nation than crimes of courage. Courage is not common, and only wants a benevolent power to direct it to the public good. Cowardice, on the contrary, is a frequent, ſelf-intereſted, and contagious evil, which can never be improved into a virtue. Beſides, the tribunal, which has recourſe to this method, betrays its fallibility, and the laws their weakneſs, by imploring the aſſiſtance of thoſe by whom they are violated.

The advantages are, that it prevents great crimes, the effects of which being public, and the

perpetrators concealed, terrify the people. It alſo contributes to prove, that he who violates the laws, which are public conventions, will alſo violate private compacts. It appears to me, that a general law, promiſing a reward to every accomplice who diſcovers his aſſociates, would be better than a ſpecial declaration in every particular caſe; becauſe it would prevent the union of thoſe villains, as it would inſpire a mutual diſtruſt, and each would be afraid of expoſing himſelf alone to danger. The accomplice, however, ſhould be pardoned, on condition of tranſportation. . . . . But it is in vain, that I torment myſelf with endeavouring to extinguiſh the remorſe I feel in attempting to induce the ſacred laws, the monument of public confidence, the foundation of human morality, to authoriſe diſſimulation and perfidy. But what an example does it offer to a nation, to ſee the interpreters of the laws break their promiſe of pardon, and on the ſtrength of learned ſubtleties, and to the ſcandal of public faith, drag him to puniſhment who hath accepted of their invitation! Such examples are not uncommon, and this is the reaſon, that political ſociety is regarded as a complex machine, the ſprings of which are moved at pleaſure by the moſt dexterous or moſt powerful.

CHAP.

CHAP. XXXVIII.

Of ſuggeſtive Interrogations.

THE laws forbid *ſuggeſtive interrogations*; that is, according to the civilians, queſtions which, with regard to the circumſtances of the crime, are *ſpecial* when they ſhould be *general*; or, in other words, thoſe queſtions which, having an immediate reference to the crime, ſuggeſt to the criminal an immediate anſwer. Interrogations, according to the law, ought to lead to the fact indirectly and obliquely, but never directly or immediately. The intent of this injunction is, either that they ſhould not ſuggeſt to the accuſed an immediate anſwer that might acquit him, or that they think it contrary to nature that a man ſhould accuſe himſelf. But, whatever be the motive, the laws have fallen into a palpable contradiction, in condemning ſuggeſtive interrogations, whilſt they authoriſe torture. Can there be an interrogation more ſuggeſtive than pain? Torture will ſuggeſt to a robuſt villain an obſtinate ſilence, that he may exchange a greater puniſhment for a leſs; and to a feeble man confeſſion, to relieve him from the preſent pain,

which affects him more than the apprehension of the future. If a special interrogation be contrary to the right of nature, as it obliges a man to accuse himself, torture will certainly do it more effectually. But men are influenced more by the names than the nature of things.

He who obstinately refuses to answer the interrogatories, deserves a punishment, which should be fixed by the laws, and that of the severest kind; that criminals should not, by their silence, evade the example which they owe the public. But this punishment is not necessary when the guilt of the criminal is indisputable, because in that case interrogation is useless, as is likewise his confession, when there are, without it, proofs sufficient. This last case is most common, for experience shews, that in the greatest number of criminal prosecutions, the culprit pleads not guilty.

CHAP.

CHAP. XXXIX.

Of a particular Kind of Crimes.

THE reader will perceive that I have omitted ſpeaking of a certain claſs of crimes, which has covered Europe with blood, and raiſed up thoſe horrid piles, from whence, midſt clouds of whirling ſmoke, the groans of human victims, the crackling of their bones, and the frying of their ſtill panting bowels, were a pleaſing ſpectacle and agreeable harmony to the fanatic multitude. But men of underſtanding will perceive, that the age and country in which I live will not permit me to inquire into the nature of this crime. It were too tedious, and foreign to my ſubject, to prove the neceſſity of a perfect uniformity of opinions in a ſtate, contrary to the examples of many nations; to prove that opinions, which differ from one another only in ſome ſubtile and obſcure diſtinctions, beyond the reach of human capacity, may nevertheleſs diſturb the public tranquillity, unleſs one only religion be eſtabliſhed by authority; and that ſome opinions, by being contraſted and oppoſed to each other, in their colliſion ſtrike out the truth;

truth; whilſt others, feeble in themſelves, require the ſupport of power and authority. It would, I ſay, carry me too far, were I to prove, that, how odious ſoever is the empire of force over the opinions of mankind, from whom it only obtains diſſimulation followed by contempt; and although it may ſeem contrary to the ſpirit of humanity and brotherly love, commanded us by reaſon, and authority, which we more reſpect, it is nevertheleſs neceſſary and indiſpenſible. We are to believe, that all theſe paradoxes are reſoved beyond a doubt, and are conformable to the true intereſt of mankind, if practiſed by a lawful authority. I write only of *crimes* which violate the laws of nature and the ſocial contract, and not of *ſins*, even the temporal puniſhments of which muſt be determined from other principles than thoſe of a limited human philoſophy.

CHAP.

CHAP. XL.

Of falſe Ideas of Utility.

A PRINCIPAL ſource of errors and injuſtice, are falſe ideas of utility. For example; that legiſlator has falſe ideas of utility, who conſiders particular more than general conveniences; who had rather command the ſentiments of mankind than excite them, and dares ſay to reaſon, "Be thou a ſlave;" who would ſacrifice a thouſand real advantages to the fear of an imaginary or trifling inconvenience; who would deprive men of the uſe of fire for fear of being burnt, and of water for fear of their being drowned; and who know of no means of preventing evil but by deſtroying it.

The laws of this nature, are thoſe which forbid to wear arms, diſarming thoſe only who are not diſpoſed to commit the crime which the laws mean to prevent. Can it be ſuppoſed, that thoſe who have the courage to violate the moſt ſacred laws of humanity, and the moſt important of the code, will reſpect the leſs conſiderable and arbitrary injunctions, the violation of which is ſo eaſy, and of ſo little comparative importance? Does

Does not the execution of this law deprive the ſubject of that perſonal liberty, ſo dear to mankind and to the wiſe legiſlator; and does it not ſubject the innocent to all the diſagreeable circumſtances that ſhould only fall on the guilty? It certainly makes the ſituation of the aſſaulted worſe, and the aſſailants better, and rather encourages than prevents murder, as it requires leſs courage to attack armed than unarmed perſons.

It is a falſe idea of utility, that would give to a multitude of ſenſible beings that ſymmetry and order, which inanimate matter is alone capable of receiving; to neglect the preſent, which are the only motives that act with force and conſtancy on the multitude, for the more diſtant, whoſe impreſſions are weak and tranſitory, unleſs increaſed by that ſtrength of imagination ſo very uncommon among mankind. Finally, that is a falſe idea of utility, which, ſacrificing things to names, ſeparates the public good from that of individuals.

There is this difference between a ſtate of ſociety and a ſtate of nature, that a ſavage does no more miſchief to another than is neceſſary to procure ſome benefit to himſelf; but a man in ſociety is ſometimes tempted, from a fault in the laws, to injure another, without any proſpect of

of advantage. The tyrant inſpires his vaſſals with fear and ſervility, which rebound upon him with double force, and are the cauſe of his torment. Fear, the more private and domeſtic it is, the leſs dangerous is it to him who makes it the inſtrument of his happineſs; but the more it is public, and the greater number of people it affects, the greater is the probability that ſome mad, deſperate, or deſigning perſon will ſeduce others to his party, by flattering expectations; and this will be the more eaſily accompliſhed, as the danger of the enterprize will be divided amongſt a greater number, becauſe the value the unhappy ſet upon their exiſtence is leſs, as their miſery is greater.

CHAP.

CHAP. XLI.

Of the Means of preventing Crimes.

IT is better to prevent crimes, than to puniſh them. This is the fundamental principle of good legiſlation, which is the art of conducting men to the *maximum* of happineſs, and to the *minimum* of miſery, if we may apply this mathematical expreſſion to the good and evil of life. But the means hitherto employed for that purpoſe, are generally inadequate, or contrary to the end propoſed. It is impoſſible to reduce the tumultuous activity of mankind to abſolute regularity; for, midſt the various and oppoſite attractions of pleaſure and pain, human laws are not ſufficient entirely to prevent diſorders in ſociety. Such, however, is the chimera of weak men, when inveſted with authority. To prohibit a number of indifferent actions, is not to prevent the crimes which they may produce, but to create new ones; it is to change at will the ideas of virtue and vice, which, at other times, we are told, are eternal and immutable. To what a ſituation ſhould we be reduced, if every thing were to be forbidden that might poſſibly lead to

a crime? We muſt be deprived of the uſe of our ſenſes. For one motive that induces a man to commit a real crime, there are a thouſand which excite him to thoſe indifferent actions, which are called crimes by bad laws. If then, the probability that a crime will be committed be in proportion to the number of motives, to extend the ſphere of crimes will be to increaſe that probability. The generality of laws are only excluſive privileges; the tribute of all to the advantage of a few.

Would you prevent crimes? Let the laws be clear and ſimple; let the entire force of the nation be united in their defence; let them be intended rather to favour every individual, than any particular claſſes of men; let the laws be feared, and the laws only. The fear of the laws is ſalutary, but the fear of men is a fruitful and fatal ſource of crimes. Men enſlaved are more voluptuous, more debauched, and more cruel than thoſe who are in a ſtate of freedom. Theſe ſtudy the ſciences, the intereſt of nations, have great objects before their eyes, and imitate them; but thoſe, whoſe views are confined to the preſent moment, endeavour, midſt the diſtraction of riot and debauchery, to forget their ſituation; accuſtomed to the uncertainty of all events, for the laws determine none, the con-

ſequence of their crimes become problematical, which gives an additional force to the ſtrength of their paſſions.

In a nation, indolent from the nature of the climate, the uncertainty of the laws confirms and increaſes men's indolence and ſtupidity. In a voluptuous but active nation, this uncertainty occaſions a multiplicity of cabals and intrigues, which ſpread diſtruſt and diffidence through the hearts of all, and diſſimulation and treachery are the foundation of their prudence. In a brave and powerful nation, this uncertainty of the laws is at laſt deſtroyed, after many oſcillations from liberty to ſlavery, and from ſlavery to liberty again.

CHAP.

CHAP. XLII.

Of the Sciences.

WOULD you prevent crimes? Let liberty be attended with knowledge. As knowledge extends, the diſadvantages which attend it diminiſh, and the advantages increaſe. A daring impoſtor, who is always a man of ſome genius, is adored by the ignorant populace, and deſpiſed by men of underſtanding. Knowledge facilitates the compariſon of objects, by ſhewing them in different points of view. When the clouds of ignorance are diſpelled by the radiance of knowledge, authority trembles, but the force of the laws remains immoveable. Men of enlightened underſtanding muſt neceſſarily approve thoſe uſeful conventions, which are the foundation of public ſafety; they compare, with the higheſt ſatisfaction, the inconſiderable portion of liberty of which they are deprived, with the ſum total ſacrificed by others for their ſecurity; obſerving that they have only given up the pernicious liberty of injuring their fellow-creatures, they bleſs the throne, and the laws upon which it is eſtabliſhed.

It is falſe that the ſciences have always been prejudicial to mankind. When they were ſo, the evil was inevitable. The multiplication of the human ſpecies on the face of the earth introduced war, the rudiments of arts, and the firſt laws, which were temporary compacts ariſing from neceſſity, and periſhing with it. This was the firſt philoſophy, and its few elements were juſt, as indolence and want of ſagacity, in the early inhabitants of the world, preſerved them from error.

But neceſſities increaſing with the number of mankind, ſtronger and more laſting impreſſions were neceſſary to prevent their frequent relapſes into a ſtate of barbarity, which became every day more fatal. The firſt religious errors, which peopled the earth with falſe divinities, and created a world of inviſible beings to govern the viſible creation, were of the utmoſt ſervice to mankind. The greateſt benefactors to humanity were thoſe who dared to deceive, and led pliant ignorance to the foot of the altar. By preſenting to the minds of the vulgar things out of the reach of their ſenſes, which fled as they purſued, and always eluded their graſp; which, as they never comprehended, they never deſpiſed, their different paſſions were united, and attached to a ſingle object. This was the firſt tranſition of all

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nations from their ſavage ſtate. Such was the neceſſary, and perhaps the only bond of all ſocieties at their firſt formation. I ſpeak not of the choſen people of God, to whom the moſt extraordinary miracles, and the moſt ſignal favours, ſupplied the place of human policy. But as it is the nature of error to ſubdivide itſelf *ad infinitum*, ſo the pretended knowledge which ſprung from it transformed mankind into a blind fanatic multitude, jarring and deſtroying each other in the labyrinth in which they were incloſed: hence it is not wonderful, that ſome ſenſible and philoſophic minds ſhould regret the ancient ſtate of barbarity. This was the firſt epocha in which knowledge, or rather opinions, were fatal.

The ſecond may be found in the difficult and terrible paſſage from error to truth, from darkneſs to light. The violent ſhock between a maſs of errors, uſeful to the few and powerful, and the truths ſo important to the many and the weak, with the fermentation of paſſions excited on that occaſion, were productive of infinite evils to unhappy mortals. In the ſtudy of hiſtory, whoſe principal periods, after certain intervals, much reſemble each other, we frequently find, in the neceſſary paſſage from the obſcurity of ignorance to the light of philoſophy, and from tyranny to liberty, its natural conſequence, one-

generation ſacrificed to the happineſs of the next. But when this flame is extinguiſhed, and the world delivered from its evils, truth, after a very ſlow progreſs, ſits down with monarchs on the throne, and is worſhipped in the aſſemblies of nations. Shall we then believe, that light diffuſed among the people is more deſtructive than darkneſs, and that the knowledge of the relations of things can ever be fatal to mankind?

Ignorance may indeed be leſs fatal than a ſmall degree of knowledge, becauſe this adds, to the evils of ignorance, the inevitable errors of a confined view of things on this ſide the bounds of truth; but a man of enlightened underſtanding, appointed guardian of the laws, is the greateſt bleſſing that a ſovereign can beſtow on a nation. Such a man is accuſtomed to behold truth, and not to fear it; unacquainted with the greateſt part of thoſe imaginary and inſatiable neceſſities, which ſo often put virtue to the proof, and accuſtomed to contemplate mankind from the moſt elevated point of view, he conſiders the nation as his family, and his fellow citizens as brothers; the diſtance between the great and the vulgar appears to him the leſs, as the number of mankind he has in view is greater.

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The philoſopher has neceſſities and intereſts unknown to the vulgar, and the chief of theſe is not to belie in public the principles he taught in obſcurity, and the habit of loving virtue for its own ſake. A few ſuch philoſophers would conſtitute the happineſs of a nation; which however would be but of ſhort duration, unleſs by good laws the number were ſo increaſed as to leſſen the probability of an improper choice.

CHAP.

CHAP. XLIII.

Of Magiſtrates.

ANOTHER method of preventing crimes is, to make the obſervance of the laws, and not their violation, the intereſt of the magiſtrate.

The greater the number of thoſe who conſtitute the tribunal, the leſs is the danger of corruption; becauſe the attempt will be more difficult, and the power and temptation of each individual will be proportionably leſs. If the ſovereign, by pomp and the auſterity of edicts, and by refuſing to hear the complaints of the oppreſſed, accuſtom his ſubjects to reſpect the magiſtrates more than the laws, the magiſtrates will gain indeed, but it will be at the expence of public and private ſecurity.

CHAP. XLIV.

Of Rewards.

YET another method of preventing crimes is, to reward virtue. Upon this ſubject the laws of all nations are ſilent. If the rewards, propoſed by academies for the diſcovery of uſeful truths, have increaſed our knowledge, and multiplied good books, is it not probable that rewards, diſtributed by the beneficent hand of a ſovereign, would alſo multiply virtuous actions? The coin of honour is inexhauſtible, and is abundantly fruitful in the hands of a prince who diſtributes it wiſely.

CHAP.

CHAP. XLV.

Of Education.

FINALLY, the moſt certain method of preventing crimes, is to perfect the ſyſtem of education. But this is an object too vaſt, and exceeds my plan; an object, if I may venture to declare it, which is ſo intimately connected with the nature of government, that it will always remain a barren ſpot, cultivated only by a few wiſe men.

A great man, who is perſecuted by that world he hath enlightened, and to whom we are indebted for many important truths, hath moſt amply detailed the principal maxims of uſeful education. This chiefly conſiſts in preſenting to the mind a ſmall number of ſelect objects; in ſubſtituting the originals for the copies, both of phyſical and moral phenomena; in leading the pupil to virtue by the eaſy road of ſentiment, and in withholding him from evil by the infallible power of neceſſary inconveniences, rather than by command, which only obtains counterfeit and momentary obedience.

CHAP. XLVI.

Of Pardons.

AS puniſhments become more mild, clemency and pardon are leſs neceſſary. Happy the nation in which they will be conſidered as dangerous! Clemency, which has often been deemed a ſufficient ſubſtitute for every other virtue in ſovereigns, ſhould be excluded in a perfect legiſlation, where puniſhments are mild, and the proceedings in criminal caſes regular and expeditious. This truth will ſeem cruel to thoſe who live in countries, where, from the abſurdity of the laws, and the ſeverity of puniſhments, pardons, and the clemency of the prince, are neceſſary. It is indeed one of the nobleſt prerogatives of the throne, but, at the ſame time, a tacit diſapprobation of the laws. Clemency is a virtue which belongs to the legiſlator, and not to the executor of the laws; a virtue which ought to ſhine in the code, and not in private judgment. To ſhew mankind, that crimes are ſometimes pardoned, and that puniſhment is not the neceſſary conſequence, is to nouriſh the flattering hope of impunity, and is the cauſe of their conſidering every puniſhment inflicted as

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an act of injuſtice and oppreſſion. The prince, in pardoning, gives up the public ſecurity in favour of an individual, and, by his ill-judged benevolence, proclaims a public act of impunity. Let, then, the executors of the laws be inexorable, but let the legiſlator be tender, indulgent and humane. He is a wiſe architect, who erects his edifice on the foundation of ſelf-love, and contrives, that the intereſt of the public ſhall be the intereſt of each individual; who is not obliged by particular laws, and irregular proceedings, to ſeparate the public good from that of individuals, and erect the image of public felicity on the baſis of fear and diſtruſt; but, like a wiſe philoſopher, he will permit his brethren to enjoy, in quiet, that ſmall portion of happineſs, which the immenſe ſyſtem, eſtabliſhed by the firſt cauſe, permits them to taſte on this earth, which is but a point in the univerſe.

A ſmall crime is ſometimes pardoned, if the perſon offended chuſes to forgive the offender. This may be an act of good-nature and humanity, but it is contrary to the good of the public. The right of puniſhing belongs not to any individual in particular, but to ſociety in general, or the ſovereign. He may renounce his own portion of this right, but cannot give up that of others.

CHAP. XLVII.

Concluſion.

I CONCLUDE with this reflection, that the ſeverity of puniſhments ought to be in proportion to the ſtate of the nation. Among a people hardly yet emerged from barbarity, they ſhould be moſt ſevere, as ſtrong impreſſions are required; but in proportion as the minds of men become ſoftened by their intercourſe in ſociety, the ſeverity of puniſhments ſhould be diminiſhed, if it be intended, that the neceſſary relation between the object and the ſenſation ſhould be maintained.

From what I have written reſults the following general theorem, of conſiderable utility, though not conformable to cuſtom, the common legiſlator of nations.

That a puniſhment may not be an act of violence, of one or of many, againſt a private member of ſociety, it ſhould be public, immediate and neceſſary; the leaſt poſſible in the caſe given; proportioned to the crime, and determined by the laws.

A

COMMENTARY

ON THE BOOK OF

CRIMES AND PUNISHMENTS.

CHAP. I.

The Occaſion of this Commentary.

HAVING read, with infinite ſatisfaction, the little book on Crimes and Puniſhments, which in morality, as in medicine, may be compared to one of thoſe few remedies, capable of alleviating our ſufferings; I flattered myſelf that it would be a means of ſoftening the remains of barbariſm in the laws of many nations; I hoped for ſome reformation in mankind, when I was informed, that, within a few miles of my abode, they had juſt hanged a girl of eighteen, beautiful, well made, accompliſhed, and of a very reputable family.

She was culpable of having ſuffered herſelf to be got with child, and alſo, of having aban-

doned her infant. This unfortunate girl, flying from her father's houſe, is taken in labour, and, without aſſiſtance, is delivered of her burden by the ſide of a wood. Shame, which in the ſex is a powerful paſſion, gave her ſtrength to return home, and to conceal her ſituation. She left her child expoſed; it is found the next morning; the mother is diſcovered, condemned and executed.

The firſt fault of this unhappy victim ought to have been concealed by the family, or rather claims the protection of the laws, becauſe it was incumbent on her ſeducer to repair the injury he had done; becauſe weakneſs hath a right to indulgence; becauſe concealing her pregnancy may endanger her life; becauſe declaring her condition deſtroys her reputation, and becauſe the difficulty of providing for her infant is a great additional misfortune.

Her ſecond fault is more criminal. She abandons the fruit of her weakneſs, and expoſes it to periſh.

But becauſe a child is dead, is it abſolutely neceſſary to kill the mother? She did not kill the child. She flattered herſelf, that ſome paſſenger would have compaſſion on the innocent babe. It is even poſſible that ſhe might intend to return and provide for it; a ſentiment ſo natural in

in the breaſt of a mother, that it ought to be preſumed. The law in the country of which I am ſpeaking, is, indeed, poſitively againſt her. But is it not an unjuſt, inhuman, and pernicious law? *Unjuſt*, becauſe it makes no diſtinction between her who murders, and her who abandons her infant; *inhuman*, becauſe it puniſhes with death a too great deſire of concealing a weakneſs; *pernicious*, becauſe it deprives the ſtate of a fruitful ſubject, in a country that wants inhabitants.

Charity hath not yet eſtabliſhed, in that nation, houſes of reception for expoſed infants. Where charity is wanting, the law is always cruel. It were much better to prevent, than to think only of puniſhing theſe frequent misfortunes. The proper object of juriſprudence is, to hinder the commiſſion of crimes, rather than condemn to death a weak woman, when it is evident that her tranſgreſſion was unattended with malice, and that ſhe hath already been ſeverely puniſhed by the pangs of her own heart.

Inſure, as far as poſſible, a reſource to thoſe who ſhall be tempted to do evil, and you will have leſs to puniſh.

CHAP. II.

Of Puniſhments.

THIS misfortune, and this very hard law, with which I was ſo ſenſibly affected, prompted me to caſt my eyes on the criminal code of nations. The humane author of the Eſſay on Crimes and Puniſhments, had but too much cauſe to complain, that the latter frequently exceed the former, and are ſometimes detrimental to the ſtate they were intended to ſerve.

Thoſe ingenious puniſhments, the *ne plus ultra* of the human mind, endeavouring to render death horrible, ſeem rather the inventions of tyranny than of juſtice.

The puniſhment of the *wheel* was firſt introduced in Germany in the times of anarchy, when thoſe who uſurped the regal power reſolved to terrify, with unheard-of torments, thoſe who ſhould diſpute their authority. In England they ripped open the belly of a man guilty of *high-treaſon*, tore out his heart, daſhed it in his face, and then threw it into the fire. And wherein did this *high-treaſon* frequently conſiſt? In having been, during a civil war, faithful to an unfor-

unfortunate king; or in having ſpoken freely on the doubtful right of the conqueror. At length, their manners were ſoftened; they continued to tear out the heart, but not till after the death of the offender. The apparatus is dreadful, but the death is mild, if death can ever be mild.

CHAP.

CHAP. III.

On the Punishment of Heretics.

THE denunciation of death to those who, in certain dogmas, differed from the established church, was peculiarly the act of tyranny. No Christian emperor, before the tyrant Maximus, ever thought of condemning a man to punishment merely for points of controversy. It is true, indeed, that two Spanish bishops pursued to death the Priscilianists under Maximus; but it is also true, that this tyrant was willing to gratify the reigning party with the blood of heretics. Barbarity and justice were to him indifferent. Jealous of Theodosius, a Spaniard like himself, he endeavoured to deprive him of the empire of the East, as he had already obtained that of the West. Theodosius was hated for his cruelties; but he had found the means of gaining to his party the heads of the church. Maximus was willing to display the same zeal, and to attach the Spanish bishops to his faction. He flattered both the old and the new religion; he was as treacherous as inhuman, as indeed were all those who at that time either pretended to, or obtained empire.

empire. That vaſt part of the world was then governed like Algiers at preſent. Emperors were created and dethroned by the military power, and were often choſen from among nations that were reputed barbarous. Theodoſius oppoſed to his competitor other barbarians from Scythia. He filled the army with Goths, and ſurpriſed Alaric the conqueror of Rome. In this horrible confuſion, each endeavoured to ſtrengthen his party by every means in his power.

Maximus having cauſed the Emperor Gratian, the colleague of Theodoſius, to be aſſaſſinated at Lyons, meditated the deſtruction of Valentinian the ſecond, who, during his infancy, had been named ſucceſſor to Gratian. He aſſembled at Treves a powerful army, compoſed of Gauls and Germans. He cauſed troops to be levied in Spain, when two Spaniſh biſhops, Idacio and Ithacus, or Itacius, both men of credit, came and demanded of him the blood of Priſcilian, and all his adherents, who were of opinion, that ſouls were emanations from God; that the Trinity did not contain three hypoſtaſes; and moreover, they carried their ſacrilege ſo far as to faſt on Sundays. Maximus, half Pagan, and half Chriſtian, ſoon perceived the enormity of theſe crimes. The holy biſhops, Idacio and Itacius, obtained leave to torture Priſcilian and his accomplices

complices before they were put to death. They were both preſent, that things might be done according to order, and they returned bleſſing God, and numbering Maximus, the defender of the faith, among the ſaints. But Maximus being afterward defeated by Theodoſius, and aſſaſſinated at the feet of his conqueror, had not the good fortune to be canonized.

It is proper to obſerve, that Saint Martin, biſhop of Tours, who was really a good man, ſolicited the pardon of Priſcilian; but being himſelf accuſed of hereſy by the biſhops, he returned to Tours, for fear of the torture at Treves.

As to Priſcilian, he had the conſolation, after he was hanged, of being honoured by his ſect as a martyr. His feaſt was celebrated, and would be celebrated ſtill, if there were any Priſcilianiſts remaining.

This example made the intire church tremble; but it was ſoon after imitated and ſurpaſſed. Priſcilianiſts had been put to death by the ſword, the halter, and by lapidation. A young lady of quality, ſuſpected to have faſted on a Sunday, was at Bourdeaux *only* ſtoned to death. Theſe puniſhments appeared too mild; it was proved that God required that heretics ſhould be roaſted alive. The peremptory argument, in ſupport of

of this opinion was, that God punishes them in that manner in the next world, and that every prince, or his representative, even down to a petty constable, is the image of God in this sublunary world.

On this principle it was, that all over Europe they burnt witches and sorcerers, who were manifestly under the empire of the devil; and also heterodox Christians, which were deemed still more criminal and dangerous.

It is not certainly known, what was the crime of those priests who were burnt at Orleans in the presence of king Robert and his wife Constantia, in the year 1022. How indeed should it be known? there being, at that time, but a small number of clerks and monks that could write. All we certainly know is, that Robert and his wife feasted their eyes with this abominable spectacle. One of the sectaries had been confessor to her majesty, who thought she could not better repair the misfortune of having confessed to a heretic, than by seeing him devoured by the flames.

Custom becomes law; from that period to the present time, a space of more than seven hundred years, the church hath continued to burn those that are guilty, or supposed guilty, of an error in opinion.

CHAP.

CHAP. IV.

On the Extirpation of Hereſy.

IT ſeems neceſſary to diſtinguiſh an hereſy of opinion from faction. From the firſt ages of Chriſtianity opinions have been different. The Chriſtians of Alexandria were, in many points, of a different opinion from thoſe of Antioch. The Achaians differed from the Aſiatics. This diverſity of opinion exiſted from the beginning, and probably will continue for ever. Jeſus Chriſt, who could have united all the faithful in the ſame ſentiments, did it not; and therefore we may conclude that it was not his deſign; but that he choſe rather to exerciſe all his churches in acts of indulgence and charity, by permitting different ſyſtems, yet all agreeing to acknowledge him their lord and maſter. Theſe ſeveral ſects, ſo long as they were tolerated by the emperors, or concealed from their ſight, had it not in their power to perſecute each other, being equally ſubject to the Roman magiſtrates; they could only diſpute. If they were perſecuted, they equally claimed the privilege of nature: "Suffer us," they ſaid, "to adore our God in peace, and do not refuſe

" us the liberty you grant to the Jews:" Every ſect may now urge the ſame argument to their oppreſſors. They may ſay to thoſe who want privileges to the Jews; " Treat us " as you treat the ſons of Jacob; let us, like " them, pray to God according to our con- " ſcience. Our opinion will no more injure " your ſtate, than Judaiſm. You tolerate the " enemies of Jeſus Chriſt, tolerate us who adore " him, and who differ from you only in theo- " logical ſubtleties. Do not deprive yourſelves " of uſeful ſubjects; uſeful in your manufac- " tures, your marine, and the cultivation of your " lands. Of what importance is it, that their " creed be ſomewhat different from yours? You " want their labour, and not their catechiſm."

Faction is quite a different thing. It always happens, that a perſecuted ſect degenerates into faction. The oppreſſed naturally unite and animate each other; and are generally more induſtrious in ſtrengthening their party, than their perſecutors in their extermination. They muſt either deſtroy or be deſtroyed. So it happened after the perſecution excited in 304, by Galerius, in the two laſt years of Dioclesian. The Chriſtians, having been favoured by that emperor during eighteen years, were become too numerous and too rich to be exterminated. They joined Chlorus; they fought for his ſon Con-

ſtantine, and a total revolution of the empire was the conſequence.

Small events may be compared with great, when they are produced by the ſame ſpirit. Revolutions of a ſimilar kind happened in Holland, in Scotland and in Switzerland. When Ferdinand and Iſabella drove the Jews out of Spain, where they were eſtabliſhed not only before the reigning family, but before the Moors, the Goths, or even the Carthaginians; if the Jews had been as warlike as they were rich, they might eaſily, in conjunction with the Arabs, have effected a revolution.

In ſhort, no ſect ever changed the government, unleſs excited by deſpair. Mahomed himſelf ſucceeded only becauſe he was driven from Mecca, and a reward offered for his head.

Would you prevent a ſect from overturning the ſtate, imitate the preſent wiſe conduct of England, of Germany, of Holland; uſe toleration. The only methods, in policy, to be taken with a new ſect, are, to put to death the chief and all his adherents, men, women, and children, without ſparing one individual; or to tolerate them, when numerous. The firſt method is that of a monſter; the ſecond of a wiſe man.

Chain your ſubjects to the ſtate by their intereſt. Let the Quaker and the Turk find their advantage in living under your laws. Religion is of God to man; the civil law is of you to your people.

CHAP.

CHAP. V.

Of Profanation.

LEWIS IX. king of France, who for his virtues was numbered among the ſaints, made a law againſt blaſphemers. He condemned them to a new puniſhment; their tongues were pierced with a hot iron. It was a kind of retaliation; the ſinning member ſuffering the puniſhment. But it was ſomewhat difficult to determine what was blaſphemy. Expreſſions frequently eſcape from a man in a paſſion, from joy, or even in converſation, which are merely expletives, ſuch as the *ſela* and the *vah* of the Hebrews, the *pol* and the *ædepol* of the Latins, as alſo *per Deos immortales*, an expreſſion frequently uſed, without the leaſt intention of ſwearing by the immortal gods.

The words which are called oaths and blaſphemy, are commonly vague terms that may be variouſly interpreted. The law by which they are puniſhed, ſeems to be founded on that of the Jews, which ſays, *Thou ſhalt not take the name of the Lord thy God in vain.* The beſt commentators are of opinion, that this commandment

relates to perjury; and there is the more reaſon to believe them right, as the word *ſhave*, which is tranſlated *in vain*, properly ſignifies perjury. Now, what analogy can there be between perjury and *Cabo de Dios*, *Cadedis*, *Sangbleu*, *Ventrebleu*, *Corpo di Dio*, &c.?

It was cuſtomary with the Jews to ſwear by the life of God, *as the Lord liveth:* the phraſe was common; ſo that it was lying in the name of God that was forbidden.

Philip Auguſtus, in 1181, condemned the nobility who ſhould pronounce the words which are ſoftened in the terms *Tetebleu*, *Ventrebleu*, *Corbleu*, *Sangbleu*, to pay a fine, and the plebeians to be drowned. The firſt part of this law ſeems puerile, the latter abominable. It was an outrage to nature, to drown one man for a crime for which another paid a few pence of the money of thoſe times. So that this law, like many other, remained unexecuted, eſpecially when the king was excommunicated, and his kingdom interdicted by Pope Celeſtine III.

Saint Lewis, tranſported with zeal, ordered indiſcriminately, that whoſoever ſhould pronounce theſe indecent words, ſhould have his tongue bored, or his upper lip cut off. A citizen of Paris, having ſuffered this puniſhment, complained to Pope Innocent IV. This pontiff remonſtrated

ſtrated to the king that the puniſhment was too great for the crime, which however had no effect upon his majeſty. Happy had it been for mankind, if the popes had never affected any other ſuperiority over kings.

The ordinance of Lewis XIV. ſays, "Thoſe "who ſhall be convicted of having ſworn by, "or blaſphemed the holy name of God, of his "moſt holy mother, or of his ſaints, ſhall, for "the firſt offence, pay a fine; for the ſecond, "third, and fourth, a double, triple, and qua"druple fine; for the fifth, ſhall be put in the "ſtocks; for the ſixth, ſhall ſtand in the pillo"ry, and loſe his upper lip; for the ſeventh, "ſhall have his tongue cut out."

This law appears to be humane and juſt, as it inflicts a cruel puniſhment only on a ſevenfold repetition, which can hardly be preſumed.

But with regard to more atrocious profanations, which are called Sacrilege, the criminal ordinance mentions only robbing of churches; it takes no notice of public impieties, perhaps becauſe they were not ſuppoſed to happen, or were too difficult to ſpecify. They are left therefore to the diſcretion of the judge; and yet nothing ought to be left to diſcretion.

In ſuch extraordinary caſes, how is the judge to act? He ſhould conſider the age of the offen-

der, the nature and degree of his offence, and particularly the neceſſity of a public example. *Pro qualitate perſonæ, quoque rei conditione & temporis & ætatis & ſexus, vel clementius ſtatuendum.* If the law does not expreſly ſay that ſuch a crime ſhall be puniſhed with death, what judge ſhall think himſelf authorized to pronounce that ſentence? If the law be ſilent; if nevertheleſs a puniſhment be required, the judge ought certainly, without heſitation, to decree the leaſt ſevere, becauſe he is a man.

Sacrilegious profanations are never committed except by young debauchees. Would you puniſh them as ſeverely as if they had murdered a brother? Their youth pleads in their favour. They are not ſuffered to diſpoſe of their poſſeſſions, becauſe they are ſuppoſed to want maturity of judgment, ſufficient to foreſee the conſequences of an imprudent tranſaction. Is it not therefore natural to ſuppoſe, that they are incapable of foreſeeing the conſequences of their impiety?

Would you treat a wild young man, who, in his phrenzy, had profaned a ſacred image, without ſtealing it, with the ſame rigour that you puniſhed a Brinvilliers, who poiſoned his father and his whole family?

There is no law againſt the unhappy youth, and you are determined to make one that ſhall condemn

condemn him to the ſevereſt puniſhment! He deſerved chaſtiſement; but did he deſerve ſuch excruciating torture, and the moſt horrible death?

But he had offended God! True, moſt grievouſly. Imitate God in your proceedings againſt him. If he be penitent, God forgives him. Impoſe a penance, and let him be pardoned.

Your illuſtrious *Monteſquieu* hath ſaid: It is our duty to honour the Deity, and not to revenge him. Let us weigh theſe words. They do not mean, that we ſhould neglect the maintenance of public decorum; but, as the judicious author of the preceding Eſſay obſerves, that it is abſurd for an inſect to pretend to revenge the ſupreme Being. A village magiſtrate, or the magiſtrate of a city, is neither a Moſes nor a Joſhua.

CHAP.

CHAP. VI.

Of the Indulgence of the Romans in Matters of Religion.

THE amazing contraſt between the Roman laws, and the barbarous inſtitutions by which they were ſucceeded, hath often been the ſubject of converſation among the ſpeculative part of mankind.

Doubtleſs the Roman ſenate held the ſupreme God in as great veneration as we; and profeſſed as much eſteem for their ſecondary deities as we for our ſaints. *Ab Jove principium* was their common formule. Pliny, in his panegyric on the good Trajan, atteſts, that the Romans never omitted to begin their diſcourſe and affairs by invoking the Deity. Cicero and Livy tell us the ſame thing. No people were more religious; but they were too wiſe, and too great, to deſcend to the puniſhment of idle language or philoſophic opinions: they were incapable of inflicting barbarous puniſhments on thoſe who, with Cicero, himſelf an augur, had no faith in auguries; or on thoſe who, like Cæſar, aſſerted in full ſenate, that the gods do not puniſh men after death.

It

It hath often been remarked, that the ſenate permitted the chorus in the Troad to ſing, *There is nothing after death, and death itſelf is nothing. You aſk, what becomes of the dead? They are where they were ere they were born* *.

Was ever profanation more flagrant than this? From Ennius to Auſonius all is profanation, notwithſtanding the reſpect for divine worſhip. Why were theſe things diſregarded by the ſenate? Becauſe they did not, in any wiſe, affect the government of the ſtate; becauſe they diſturbed no inſtitution, nor religious ceremony. The *police* of the Romans was nevertheleſs excellent; they were nevertheleſs abſolute maſters of the beſt part of the world, till the reign of Theodoſius the ſecond.

It was a maxim of the Romans, *Deorum offenſæ, Diis curæ*, Offences againſt the gods concern the gods only. The ſenate, by the wiſeſt inſtitution, being at the head of religion, were under no apprehenſions that a convocation of prieſts ſhould force them to revenge the prieſthood under a pretext of revenging heaven. They never ſaid, let us tear the impious aſunder, leſt we ourſelves be deemed impious; let us

* *Poſt mortem nihil eſt, mors ipſaque nihil, &c.* SENECA.

ſhew

ſhew the prieſthood, by our cruelty, that we are no leſs religious than they.

But our religion is more holy than that of the Romans, and conſequently impiety is a greater crime. Granted. God will puniſh it. The part of man is, to puniſh that which is criminal in the public diſorder which the impiety hath occaſioned. But if in the act of impiety the delinquent hath not even ſtolen a handkerchief; if the ceremonies of religion have been in no wiſe diſturbed, ſhall we, as I ſaid before, puniſh the impiety as we would puniſh parricide? The Marſhal d'Ancre had cauſed a white cock to be killed when the moon was at full: ought we therefore to burn the Marſhall d'Ancre.

Eſt modus in rebus, ſunt certi denique fines;
Nec ſcutica dignum horribili ſectere flagello.

CHAP.

CHAP. VII.

On the Crime of Preaching; and of Anthony.

A CALVINIST teacher, who, in certain provinces, preaches to his flock, if he be detected, is punished with death; and those who have given him a supper, or a bed, are sent to the gallies for life.

In other countries, if a Jesuit be caught preaching, he is hanged. Is it to avenge God that this Calvinist and this Jesuit are put to death? Have both parties built upon the following Evangelical law? *If he neglect to hear the church, let him be unto thee as an heathen man and a publican.* But the Evangelist does not order that this heathen and this publican should be hanged.

Or have they built on this passage in Deuteronomy *; *If among you a prophet arise; and that which he hath said come to pass; and he sayeth unto you, let us follow strange gods; and if thy brother, or thy son, or thy wife, or the friend of thy heart, say unto thee, Come, let us follow strange gods: let them be straightways killed, strike thou first, and all the people after thee.*

* Chap. xiii.

But

But neither this Jeſuit nor the Calviniſt ſaid unto you, Come, let us follow ſtrange gods.

The counſellor Dubourg, the monk Jehan Chouvin, named Calvin, the Spaniſh phyſician Servetus, the Calabrian Gentilis, all worſhipped the ſame God: and yet the preſident Minard cauſed counſellor Dubourg to be burnt; and Dubourg's friends cauſed preſident Minard to be aſſaſſinated; Jehan Calvin cauſed the phyſician Servetus to be roaſted; and had likewiſe the conſolation to be a principal means of bringing the Calabrian Gentilis to the block; and the ſucceſſors of Jehan Calvin burnt Anthony. Was it reaſon, or piety, or juſtice, that committed theſe murders?

This hiſtory of Anthony is one of the moſt ſingular which the annals of phrenzy hath preſerved. I read the following account in a very curious manuſcript; it is in part related by Jacob Spon.

Anthony was born at Brieu in Lorrain, of catholic parents, and he was educated by the Jeſuits at Pont a Mouſſon. The preacher Feri engaged him in the proteſtant religion at Metz. Having returned to Nancy he was proſecuted as a heretic, and, had he not been ſaved by a friend, would certainly have been hanged. He fled for refuge

refuge to Sedan, where, being taken for a papiſt, he narrowly eſcaped aſſaſſination.

Seeing by what ſtrange fatality his life was not in ſafety, either among papiſts or proteſtants, he went to Venice and turned Jew. He was poſitively perſuaded, even to the laſt moments of his life, that the religion of the Jews was the only true religion; for that, if it was once true, it muſt always be ſo. The Jews did not circumciſe him, for fear of offending the ſtate; but he was no leſs internally a Jew. He now went to Geneva, where, concealing his faith, he became a preacher, was preſident to the college, and finally what is called a miniſter.

The perpetual combat in his breaſt between the religion of Calvin, which he was obliged to preach, and that of Moſes, which was the only religion he believed, produced a long illneſs. He became melancholy, and at laſt quite mad, crying aloud, that he was a Jew. The miniſters of the goſpel came to viſit him, and endeavoured to bring him to himſelf; but he anſwered, "that "he adored none but the God of Iſrael; that "it was impoſſible for God to change; that "God could never have given a law, and in-"ſcribed it with his own hand, with an inten-"tion that it ſhould be aboliſhed." He ſpoke againſt Chriſtianity, and afterwards retracted all

he had ſaid, and even wrote his confeſſion of faith, to eſcape puniſhment; but the unhappy perſuaſion of his heart would not permit him to ſign it. The council of the city aſſembled the clergy, to conſult what was to be done with the unfortunate Anthony. The minority of theſe clergy were of opinion, that they ſhould have compaſſion on him, and rather endeavour to cure his diſeaſe than puniſh him. The majority determined that he ſhould be burnt, and he was burnt. This tranſaction is of the year 1632 *. A hundred years of reaſon and virtue are ſcarce ſufficient to expiate ſuch a deed.

* Spon, p. 500. Guy Vances.

CHAP.

CHAP. VIII.

The History of Simon Morin.

THE tragical end of Simon Morin is not leſs horrible than that of poor Anthony. It was midſt the feaſting, pleaſures, and gallantry of a brilliant court; it was even in the times of the greateſt licentiouſneſs, that this unfortunate madman was burnt at Paris, in the year 1663. Imagining that he had ſeen viſions, he carried his folly ſo far as to believe that he was ſent from God, and that he was incorporated with Jeſus Chriſt.

The Parliament very wiſely condemned him to be confined in a mad-houſe. What was very remarkable, there happened to be confined in the ſame mad-houſe another fool, who called himſelf God the Father. Simon Morin was ſo ſtruck with the folly of his companion, that he acknowledged his own, and appeared for a time to have recovered his ſenſes. He declared his repentance, and, unfortunately for himſelf, obtained his liberty.

Sometime after, he relapſed into his former nonſenſe, and began to dogmatize. His unhappy

deſtiny brought him acquainted with St. Sorlin Deſmarets, who for ſome months was his friend, but who afterwards, from jealouſy, became his moſt cruel perſecutor.

This Deſmarets was no leſs a viſionary than Morin. His firſt follies indeed were innocent. He printed the Tragi-Comedies of *Erigone* and *Mirame*, with a tranſlation of the Pſalms; the Romance of Ariane, and the Poem of Clovis, with the office of the holy Virgin turned into verſe. He likewiſe publiſhed dithyrambic poems, enriched with invectives againſt Homer and Virgil. From this kind of follies he proceeded to others of a more ſerious nature. He attacked *Port-Royal*, and after confeſſing that he had perverted ſome women to atheiſm, he commenced prophet. He pretended that God had given him, with his own hand, the key to the treaſure of the Apocalypſe, that with this key he would reform the whole world, and that he ſhould command an army of an hundred and forty thouſand men againſt the Janſeniſts.

Nothing could have been more reaſonable and more juſt, than to have confined him in the ſame place with Simon Morin; but can it be believed, that he found credit with the Jeſuit Annat, the king's confeſſor? whom he perſuaded, that this poor Simon Morin would eſtabliſh a ſect

a ſect almoſt as dangerous as the Janſeniſts themſelves. In ſhort, carrying his infamy ſo far as to turn informer, he obtained an order to ſeize the perſon of his rival. Shall I tell it! Simon Morin was condemned to be burnt alive?

In conducting him to the ſtake, there was found, in one of his ſtockings, a paper in which he begged forgiveneſs of God for all his errors. This ought to have ſaved him; but no: the ſentence was confirmed, and he was executed without mercy.

Such deeds are enough to make a man's hair briſtle with horror. Yet where is the country that hath not beheld ſuch ſhocking ſpectacles? Mankind univerſally forget that they are brothers, and perſecute each other even to death. Let us conſole ourſelves with the hope, that ſuch dreadful times are paſſed, never more to return.

CHAP. IX.

Of Witches.

IN the year 1748, in the biſhopric of Wurtſburg, an old woman was convicted of witchcraft and burnt. This was an extraordinary phenomenon in the preſent century. But how incredible it ſeems, that a people, who boaſted of their reformation, and of having trampled ſuperſtition under their feet, and who flattered themſelves that they had brought their reaſon to perfection; is it not wonderful, I ſay, that ſuch a people ſhould have believed in witchcraft; ſhould have burnt old women accuſed of this crime, and that above a hundred years after the pretended reformation of their reaſon?

In the year 1652, a country-woman, named Michelle Chaudron, of the little territory of Geneva, met the Devil in her way from the city. The Devil gave her a kiſs, received her homage, and imprinted on her upper lip and on her right breaſt, the mark which he is wont to beſtow upon his favourites. This ſeal of the Devil is a little ſign upon the ſkin, which renders it inſen-

ſible,

ſible, as we are aſſured by all the demonographical civilians of thoſe times.

The Devil ordered Michelle Chaudron to bewitch two young girls. She obeyed her maſter punctually. The parents of the two girls accuſed her of dealing with the Devil. The girls, being confronted with the criminal, declared, that they felt a continual prickling in ſome parts of their bodies, and that they were poſſeſſed. Phyſicians were called, at leaſt men that paſſed for phyſicians in thoſe days. They viſited the girls. They ſought for the ſeal of the Devil on the body of Michelle, which ſeal is called, in the verbal proceſs, the *Satanical mark*. Into one of theſe marks they plunged a long needle, which was already no ſmall torture. Blood iſſued from the wound, and Michelle teſtified by her cries that the part was not inſenſible. The judges not finding ſufficient proof that Michelle Chaudron was a witch, ordered her to be tortured, which infallibly produced the proof they wanted. The poor wretch, overcome by torment, confeſſed at laſt every thing they deſired.

The phyſicians ſought again for the Satanical mark, and found it in a little black ſpot on one of her thighs. Into this they plunged their needle. The poor creature, exhauſted and almoſt expiring with the pain of the torture,

was

was inſenſible to the needle, and did not cry out. She was inſtantly condemned to be burnt; but the world beginning at this time to be a little more civilized, ſhe was previouſly ſtrangled.

At this period every tribunal in Europe reſounded with ſuch judgments, and fire and faggot were univerſally employed againſt witchcraft as well as hereſy. The Turks were reproached with having amongſt them neither ſorcerers, witches, nor demoniacs; and the want of the latter was conſidered as an infallible proof of the falſity of their religion.

A zealous friend to the public welfare, to humanity, and to true religion, in one of his writings in favour of innocence, informs us, that there have been above a hundred thouſand witches condemned to die by Chriſtian tribunals. If, to theſe lawful maſſacres, we add the much ſuperior number of heretics ſacrificed, our part of the globe will appear one vaſt ſcaffold covered with executioners and victims, and ſurrounded by judges, guards, and ſpectators.

CHAP. X.

On the Puniſhment of Death.

IT hath long ſince been obſerved, that a man after he is hanged is good for nothing, and that puniſhments invented for the good of ſociety, ought to be uſeful to ſociety. It is evident, that a ſcore of ſtout robbers, condemned for life to ſome public work, would ſerve the ſtate in their puniſhment, and that hanging them is a benefit to nobody but the executioner. Thieves, in England, are ſeldom puniſhed with death, but are tranſported to the colonies. This is alſo practiſed in Ruſſia, where not one criminal was executed during the whole reign of the autocratical Eliſabeth. Catherine II. who hath ſucceeded her, with much more genius, follows her example; yet crimes are not multiplied by this humanity; and it generally happens that the criminals ſent to Siberia in time become honeſt people. The ſame is obſerved in the Engliſh colonies. We are aſtoniſhed at the change, and yet nothing can be more natural. The condemned are forced to continual labour for a livelihood. The opportunities of vice are wanting.

ing. They marry and multiply. Oblige men to work, and you certainly make them honeſt. It is well known, that atrocious crimes are not committed in the country, unleſs when there is too much holiday, and conſequently too much idleneſs, and conſequently too much debauchery.

The Romans never condemned a citizen to death, unleſs for crimes which concerned the ſafety of the ſtate. Theſe our maſters, our firſt legiſlators, were careful of the blood of their fellow-citizens; but we are extravagant with the blood of ours.

The queſtion hath been frequently debated, whether a judge ought to have the power to puniſh with death, when the puniſhment is undetermined by the law? This queſtion was ſolemnly agitated in the preſence of the Emperor Henry VII. who decreed that no judge ſhould have ſuch a power *.

There are ſome criminal caſes which are either ſo new, ſo complicated, and ſo unaccountable as to have eſcaped the proviſion of the laws, and which, therefore, in ſome countries are left to the diſcretion of the judge. But for one caſe in which the laws permit the death of a criminal

* Boudin de Republica, lib. iii. c. 5.

whom

whom they have not condemned, there are a thouſand wherein humanity ſhould ſave whom the laws have condemned to ſuffer.

The ſword of juſtice is in our hands, but we ought rather to blunt than to ſharpen its edge. It remains within its ſheath in the preſence of kings, to inform us that it ought ſeldom to be drawn.

There have been ſome judges who were paſſionately fond of ſpilling human blood; ſuch was Jefferies in England, and ſuch in France was the man whom they called *Coupe-tete*. Nature never intended ſuch men for magiſtrates, but for executioners.

CHAP.

CHAP. XI.

On Death Warrants.

MUST we go to the end of the world, muſt we have recourſe to the laws of China, to learn how frugal we ought to be of human blood? It is now more than four thouſand years that the tribunals of that empire have exiſted; and it is alſo more than four thouſand years that the meaneſt ſubject, at the extremity of the empire, hath not been executed without firſt tranſmitting his caſe to the emperor, who cauſes it to be thrice examined by one of his tribunals; after which he ſigns the death warrant, alters the ſentence, or entirely acquits.

But it is unneceſſary to travel ſo far for examples of this nature; Europe will abundantly ſupply us. In England, no criminal is put to death, whoſe death warrant is not ſigned by the king. It is alſo practiſed in Germany, and in moſt parts of the north. Such likewiſe was formerly the cuſtom in France, and ſuch it ought to be in all poliſhed nations. A ſentence, at a diſtance from the throne, may be dictated by cabal, prejudice, or ignorance. Such little intrigues

trigues are unknown to monarchs, who are continually ſurrounded by great objects. The members of the ſupreme council are more enlightened, leſs liable to prejudice, and better qualified than a provincial judge, to determine whether the ſtate require ſevere puniſhments. In ſhort, when inferior courts have judged according to the letter of the law, which poſſibly may be rigorous, the council mitigates the ſentence according to the true ſpirit of all laws, which teaches, never to ſacrifice a man, but in evident neceſſity.

CHAP. XII.

On Torture.

ALL mankind being expoſed to the attempts of violence or perfidy, deteſt the crimes of which they may poſſibly be the victims: all deſire that the principal offender and his accomplices may be puniſhed; nevertheleſs, there is a natural compaſſion in the human heart, which makes all men deteſt the cruelty of torturing the accuſed in order to extort confeſſion. The law has not condemned them, and yet, though uncertain of their crime, you inflict a puniſhment more horrible than that which they are to ſuffer when their guilt is confirmed. "Poſſibly thou mayſt be innocent; "but I will torture thee that I may be ſatisfied: "not that I intend to make thee any recompence "for the thouſand deaths which I have made thee "ſuffer, in lieu of that which is preparing for "thee." Who does not ſhudder at the idea? St. Auguſtin oppoſed ſuch cruelty. The Romans tortured their ſlaves only; and Quintilian, recollecting that they were men, reproved the Romans for ſuch want of humanity.

If there were but one nation in the world which had aboliſhed the uſe of torture; if in that

that nation crimes were no more frequent than in others; and if that nation be more enlightened and more flouriſhing ſince the abolition, its example ſurely were ſufficient for the reſt of the world. England alone might inſtruct all other nations in this particular; but England is not the only nation. Torture hath been aboliſhed in other countries, and with ſucceſs; the queſtion therefore is decided. Shall not a people, who pique themſelves on their politeneſs, pride themſelves alſo on their humanity? Shall they obſtinately perſiſt in their inhumanity, merely becauſe it is an ancient cuſtom? Reſerve, at leaſt, ſuch cruelty for the puniſhment of thoſe hardened wretches, who ſhall have aſſaſſinated the father of a family, or the father of his country; but that a young perſon, who commits a fault which leaves no traces behind it, ſhould ſuffer equally with a parricide; is not this an uſeleſs piece of barbarity?

I am aſhamed of having ſaid any thing on this ſubject, after what hath been already ſaid by the author of the Eſſay on Crimes and Puniſhments. I ought to have been ſatisfied with wiſhing, that mankind may read with attention the work of that friend to humanity.

CHAP. XIII.

Of certain ſanguinary Tribunals.

IS it credible, that there formerly exiſted a ſupreme tribunal more horrible than the Inquiſition, and that this tribunal was eſtabliſhed by Charlemagne? It was the judgment of Weſtphalia, otherwiſe called the Vhemic Court. The ſeverity, or rather cruelty, of this court, went ſo far as to puniſh with death, every Saxon who broke his faſt during Lent. The ſame law was alſo eſtabliſhed in *Franche-Comte*, in the beginning of the ſeventeenth century. In the archives of a little place called St. Claude, ſituated in a remote corner of the moſt mountainous part of the county of Burgundy, are preſerved the particulars of the ſentence and verbal proceſs of execution of a poor gentleman named Claude Guillon, who was beheaded on the 28th of July 1629. Being reduced to the utmoſt poverty, and urged by the moſt intolerable hunger, he eat, on a fiſh day, a morſel of horſe fleſh, which had been killed in a neighbouring field. This was his crime. He was found guilty of ſacrilege. Had he been a rich man, and had ſpent two

two hundred crowns in a ſupper of ſea-fiſh, ſuffering the poor to die of hunger, he would have been conſidered as a perſon fulfilling every duty. The following is a copy of his ſentence. "Having ſeen all the papers of the proceſs, and "heard the opinions of the doctors learned in "the law, we declare the ſaid Claude Guillon "to be truly attainted and convicted of having "taken away part of the fleſh of a horſe, killed in the meadow of that town; of having "cauſed the ſaid fleſh to be dreſſed, and of "eating the ſame on Saturday the 31ſt of "March," &c.

What infamous doctors muſt theſe have been, who gave their opinions on this occaſion? Was it among the Topinambous, or among the Hottentots, that theſe things happened? The Vhemic court was yet more horrible. Delegates from this court were ſecretly ſpread over all Germany, taking informations unknown to the accuſed, who were condemned without being heard; and frequently, in want of an executioner, the youngeſt judge performed the office himſelf *. It was requiſite, in order to be ſafe from the aſſaſſination of this court, to procure

* See the excellent abridgement of the chronological hiſtory and laws of Germany, an. 803.

letters of exemption from the emperor; and even theſe were ſometimes ineffectual. This chamber of aſſaſſins was not entirely aboliſhed till the reign of Maximilian I. It ought to have been diſſolved in the blood of its members. The Venetian Council of Ten was, in compariſon with this, a court of mercy.

What ſhall we think of ſuch horrid proceedings? Is it ſufficient to bewail humanity? There were ſome caſes that cried aloud for vengeance.

CHAP.

CHAP. XIV.

On the Difference between political and natural Laws.

I CALL *natural* laws, thoſe which nature dictates in all ages to all men, for the maintenance of that juſtice which ſhe (ſay what they will of her) hath implanted in our hearts. Theft, violence, homicide, ingratitude to beneficent parents, perjury againſt innocence, conſpiracies againſt one's country, are crimes that are univerſally and juſtly puniſhed, though with more or leſs ſeverity.

I call *political* laws, thoſe that are made in compliance with preſent neceſſity, whether it be to give ſtability to the government, or to prevent misfortune. For example; being apprehenſive that the enemy may receive intelligence from the inhabitants of the city, you ſhut the gates, and forbid any one to paſs the ramparts on pain of death.

Or, fearful of a new ſect of people, who publicly diſclaim all obedience to their ſovereign, and ſecretly conſult of means to diveſt themſelves of that obedience; who preach, that all men are equal,

equal, and that obedience is due to God alone; who, accuſing the reigning ſect of ſuperſtition, mean to deſtroy that which is conſecrated by the ſtate; you denounce death againſt thoſe who, in publicly dogmatizing in favour of this ſect, may inſtigate the people to revolt.

Or, two ambitious princes contend for a crown: the ſtrongeſt gains the prize, and puniſhes with death the partizans of the weaker. The judges become the inſtruments of vengeance of the new ſovereign, and the ſupports of his authority.

When Richard the third, the murderer of his two nephews, was acknowledged king of England, the jury found Sir William Collinburn guilty of having written to a friend of the Duke of Richmond, who was at that time raiſing an army, and who afterwards reigned by the name of Henry VII. They found two ridiculous lines of Sir William's writing, which were ſufficient to condemn him to a horrible death. Hiſtory abounds with ſuch examples of juſtice.

The right of repriſal is alſo a law adopted by nations. For example, your enemy has hanged one of your brave captains, for having defended an old ruined caſtle againſt a whole army. One of *his* captains falls into your hands; he is a worthy man, and you eſteem him; nevertheleſs

you

you hang him by way of repriſal. You ſay it is the law: that is to ſay, becauſe your enemy has been guilty of an enormous crime, you muſt be guilty of another.

Theſe political ſanguinary laws exiſt but for a time; they are temporary, becauſe they are not founded in truth. They reſemble the neceſſity which, in caſes of extreme famine, obliges people to eat each other: they ceaſe to eat men as ſoon as bread is to be had.

CHAP.

CHAP. XV.

On the Crime of High-Treaſon. On Titus Oates, and on the Death of Auguſtin de Thou.

HIGH-TREASON is an offence committed againſt the ſecurity of the commonwealth, or of the king its repreſentative. It is conſidered as parricide, and therefore ought not to be extended to offences which bear no analogy to that crime. In making it high-treaſon to commit a theft in any houſe belonging to the ſtate, or even to ſpeak ſeditious words, you leſſen the horror which the crime of high-treaſon ought to inſpire.

In our ideas of great crimes, there ſhould be nothing arbitrary. If a theft from, or imprecation againſt, a father be conſidered as parricide, you break the bond of filial piety; the ſon will then regard his parent as a terrible monſter. Every exaggeration in a law tends to its deſtruction.

In common crimes, the laws of England are favourable to the accuſed; but in caſes of high-treaſon they are againſt him. The Jeſuit Titus Oates being legally interrogated in the Houſe of Commons,

Commons, and having upon his oath declared, that he had related the *whole* truth, yet afterwards accuſed the ſecretary of the Duke of York, and ſeveral others, of high-treaſon, and his information was admitted. He likewiſe ſwore before the king's council, that he had not ſeen the ſecretary, and afterwards that he had. Notwithſtanding theſe illegalities and contradictions, the ſecretary was executed.

The ſame Titus Oates and another witneſs depoſed, that fifty Jeſuits had conſpired to aſſaſſinate Charles II. and that they had ſeen commiſſions, ſigned by father Oliva, general of the Jeſuits, for the officers that were to command an army of rebels. This evidence was ſufficient to authoriſe the tearing out the hearts of ſeveral people, and daſhing them in their faces. But ſeriouſly, can two witneſſes be thought ſufficient to convict a man whom they have a mind to deſtroy? At leaſt one would imagine they ought not to be notorious villains; neither ought that which they depoſe to be improbable.

Let us ſuppoſe that two of the moſt upright magiſtrates in the kingdom were to accuſe a man of having conſpired with the Mufti, to circumciſe the whole Council of State, the Parliament, the Archbiſhop and the Sorbonne; in vain theſe two magiſtrates might ſwear, that they had ſeen the

letters

letters of the Mufti: it would naturally be ſuppoſed that they were wrong in their heads. It was equally ridiculous to imagine, that the general of the Jeſuits ſhould raiſe an army in England, as that the Mufti intended to circumciſe the court of France. But unhappily Titus Oates was believed; that there might remain no ſpecies of atrocious folly, which hath not entered into the heart of man.

The laws of England do not conſider as guilty of conſpiracy thoſe who are privy to it, and do not inform. They ſuppoſe the informer as infamous as the conſpirator is culpable. In France, if any one be privy to a conſpiracy, and does not reveal it, he is puniſhed with death. Lewis XI. againſt whom conſpiracies were frequent, made this law; a law which a Lewis XII. or a Henry IV. could never have imagined. It not only obliges an honeſt man to divulge a crime, which, by his reſolution and advice, he might poſſibly prevent; but it renders him liable to be puniſhed as a calumniator, it being eaſy for the accuſed to manage their affairs in ſuch a manner as to elude conviction.

This was exactly the caſe of the truly reſpectable Auguſtin de Thou, counſellor of ſtate, and ſon of the only good hiſtorian of which France can boaſt; equal to Guicciardini in point of abilities,

abilities, and perhaps ſuperior in point of impartiality.

This conſpiracy was againſt Cardinal de Richelieu, rather than againſt Lewis XIII. The deſign was not to betray France to an enemy; for the king's brother, who was the principal author of the plot, could never intend to betray a kingdom to which he was the preſumptive heir, there being only between him and the crown a dying brother, and two children in the cradle.

De Thou was neither guilty in the ſight of God nor man. One of the agents of the king's brother, of the Duke of Bouillon, ſovereign prince of Sedan, and of the grand Equerry d'Effiat St. Mars, had communicated their intention to de Thou, who immediately went to St. Mars, and endeavoured to diſſuade him from the enterpriſe. If he had informed againſt him, he had no proof, and muſt inevitably have fallen a ſacrifice to the reſentment of the preſumptive heir of a ſovereign prince, of the king's favourite, and to public execration. In ſhort, he would have been puniſhed as a malignant calumniator.

The chancellor Seguier was convinced of this in confronting de Thou with the grand Equerry, when de Thou aſked the latter the following queſtion: "Do you not remember, Sir, that

" there never paſſed a day, in which I did not " endeavour to diſſuade you from the attempt?" St. Mars acknowledged it to be true. So that de Thou deſerved a recompence, rather than death, from a tribunal of Equity. He certainly deſerved to have been ſaved by cardinal Richelieu; but humanity was not his virtue. There is in this caſe ſomething more than *ſummum jus ſumma injuria*. In the ſentence of this worthy man we read, " for having had knowledge and participa- " tion of the ſaid conſpiracy." It does not ſay for not having revealed. So that his crime was, his having been informed of a crime; and he was puniſhed for having had ears and eyes.

All that we can ſay in extenuation of this ſeverity is, that it was not the act of juſtice herſelf, but of a delegated power. The *letter* of the law was poſitive; but I appeal not only to the lawyers, but to all mankind, whether the *ſpirit* of the law was not perverted? It is a melancholy abſurdity, that a ſmall number of people ſhould condemn as criminal, a man judged innocent by a whole nation, and worth their eſteem!

CHAP.

CHAP. XVI.

On religious Confeſſion.

JAURIGNY and Balthazar Gerard, who aſſaſſinated William I. prince of Orange; Clement the Dominican, Chatel, Ravaillac, and all the other parricides of thoſe times, went to confeſſion before they committed their crimes. Fanaticiſm, in that deplorable age, was carried to ſuch exceſs, that confeſſion was an additional engagement to the perpetration of villainy; an engagement deemed ſacred, becauſe confeſſion is a ſacrament.

Strada himſelf ſays, that Jaurigny *non ante facinus aggredi ſuſtinuit quam expiatam necis animam apud Dominicanum ſacerdotem cœleſti pane firmaverit.*

It appears in the interrogatory of Ravaillac that coming from the *Feuillants*, and going towards the Jeſuits college, he addreſſed himſelf to the Jeſuit d'Aubigny; that after talking to him of ſeveral apparitions which he had ſeen, he ſhewed him a knife, on the blade of which was engraved a heart and a croſs; and that he ſaid, *this heart ſignifies, that the heart of the king ſhould be in-*

duced to make war againſt the Huguenots. If this d'Aubigny had informed the king of theſe words, and deſcribed the man, the beſt of kings might poſſibly have eſcaped aſſaſſination.

On the 20th of Auguſt, 1610, three months after the death of Henry IV. whoſe wounds were yet bleeding in the hearts of his ſubjects, the advocate-general Servin, of illuſtrious memory, required that the Jeſuits ſhould be obliged to ſign the four following articles.

I. That the Council is ſuperior to the Pope.

II. That the Pope cannot deprive the King of any of his rights by excommunication.

III. That the eccleſiaſtics are, like other people, entirely ſubject to the king.

IV. That a prieſt who, by confeſſion, is apprized of a conſpiracy againſt the king or the ſtate, ſhould reveal it to the magiſtrates.

On the 22d, the parliament publiſhed an *arret*, forbidding the Jeſuits to inſtruct youth, until they had ſigned thoſe four articles. But the court of Rome was at that time ſo powerful, and that of France ſo weak, that the *arret* was diſregarded.

It is worth notice, that this court of Rome, which would not ſuffer confeſſion to be revealed when the life of a ſovereign was concerned, obliged the confeſſors to inform the Inquiſition in caſe

caſe any female ſhould accuſe another prieſt of having ſeduced or attempted to ſeduce her. Paul IV. Pius IV. Clement VIII. and Gregory XV. ordered this revelation. It was a dangerous ſnare both for the confeſſor and the penitent. It was converting a ſacrament into a regiſter of accuſations and ſacrilege; for by the ancient canons, and particularly by the Lateran council, under Innocent III. every confeſſor who reveals confeſſion, of whatſoever nature it may be, ſhall be interdicted and impriſoned for life.

Thus we ſee four different popes, in the ſixteenth and ſeventeenth centuries, ordering the revelation of a ſin of impurity, and forbidding it in caſes of parricide. A woman confeſſes, or ſuppoſes in her confeſſion to a Carmelite, that a Cordelier attempted to ſeduce her; the Carmelite muſt impeach the Cordelier. A fanatical aſſaſſin, believing that he ſhall ſerve God by killing his prince, conſults his confeſſor on this caſe of conſcience; the confeſſor is guilty of ſacrilege if he ſave the life of his ſovereign.

This horrible abſurdity is one of the unhappy conſequences of the continual oppoſition, which hath ſubſiſted for ſo many ages, between the eccleſiaſtical and civil law. Mankind have in a thouſand inſtances been ſuſpended between the crimes of ſacrilege and high-treaſon, and the di-

ſtinctions of right and wrong have been buried in a chaos, from which they are not yet emerged.

Confeſſion of ſins hath been authorized in all times and in all nations. The ancients accuſed themſelves in the myſteries of Orpheus, of Iſis, of Ceres, of Samothrace. The Jews confeſſed their ſins on the day of ſolemn expiation, and ſtill continue the ſame practice. Each penitent chuſes his confeſſor, who becomes his penitent in turn, and each receives from his companion thirty-nine laſhes whilſt he is repeating, three times, the formule of confeſſion, which conſiſts only in thirteen words, and which conſequently muſt be general.

None of theſe confeſſions were particular, and conſequently could never ſerve for a pretence to thoſe ſecret conſultations, under the ſhadow of which fanatical penitents think to ſin with impunity; a pernicious practice, by which a ſalutary inſtitution is corrupted. Confeſſion, which was intended as a curb to iniquity, hath frequently, in times of confuſion and ſeduction, become an incentive to wickedneſs. Probably it was for this reaſon, that ſo many Chriſtian ſtates have aboliſhed a holy inſtitution, which appeared to be as dangerous as uſeful.

CHAP.

CHAP. XVII.

Of false Money.

THE crime of coining false money is deemed high-treason in the second degree, and justly. To rob all the people is to be a traitor to the state. But it is asked, whether a merchant who imports ingots of gold from America, and privately converts them into good money, be guilty of high-treason, and merit death? which is the punishment annexed to this crime in almost all countries. Nevertheless, he has robbed nobody; on the contrary, he has done service to the state by increasing the currency. But he hath defrauded the king of the small profit upon the coin. He hath indeed coined good money; but he hath led others into the temptation of coining bad. Yet death is a severe punishment. I knew a lawyer who was of opinion, that such a criminal should be condemned, as a useful hand, to work in the royal mint, with irons to his legs.

CHAP.

CHAP. XVIII.

On domeſtic Theft.

IN countries where a trifling domeſtic theft, or breach of truſt, is puniſhed with death, is not the diſproportioned puniſhment dangerous to ſociety? Is it not even an encouragement to larceny? If in this caſe a maſter proſecutes his ſervant, and the unhappy wretch ſuffer death, the whole neighbourhood hold the maſter in abhorrence: they perceive that the law is contrary to nature, and conſequently that it is a bad law.

What is the reſult? Maſters, to avoid *opprobrium*, content themſelves with diſcharging the thief, who afterwards ſteals from another, and gradually becomes familiar with diſhoneſty. The puniſhment being the ſame for a ſmall theft as for a greater, he will naturally ſteal as much as he can, and at laſt will not ſcruple to turn aſſaſſin to prevent detection.

If, on the contrary, the puniſhment be proportioned to the crime; if thoſe who are guilty of a breach of truſt be condemned to labour for the public, the maſter will not heſitate to bring the offender to juſtice, and the crime will be leſs frequent: ſo true it is, that rigorous laws are often productive of crimes.

CHAP.

CHAP. XIX.

On Suicide.

THE celebrated Du Verger de Hauranne, Abbè de St. Cyran, one of the founders of Port Royal, in the year 1608, wrote a treatiſe on ſuicide, which is become one of the ſcarceſt books in Europe.

"The Decalogue," ſays that author, "forbids us to commit murder; in which precept "ſelf-murder ſeems no leſs to be underſtood, "than the murder of another: if, therefore, "there be caſes in which it is lawful to kill another, there may be caſes alſo wherein ſuicide "may be allowed. But a man ought not to attempt his own life, till after having conſulted "his reaſon. Public authority, which is the repreſentative of God, may diſpoſe of our lives. "The reaſon of man may alſo repreſent that "of the Deity, it being a ray of the eternal "light."

St. Cyran extends this argument to a great length, which after all is a mere ſophiſm. But when he comes to exemplify, he is not quite ſo eaſily anſwered. "A man may kill himſelf," ſays

ſays he, " for the good of his prince, for the " good of his country, or for the good of his " parents."

It does not appear, that we could with juſtice condemn a Codrus, or a Curtius. What prince would dare to puniſh the family of a man who had ſacrificed himſelf for his ſervice? Or rather, is there any prince who would dare not to reward them. St. Thomas, before St. Cyran, ſaid the ſame thing. But there was no need of either of Thomas, of Bonaventure, nor of Hauranne, to inform us, that a man who dies for his country deſerves our praiſe.

St. Cyran concludes, that it is lawful to do for one's own ſake, that which is praiſe-worthy if done for another. The arguments of Plutarch, of Seneca, of Montaigne, and a hundred others, are well known. I do not pretend to apologize for an action which the laws have condemned; but I do not recollect, that either the Old or New Teſtament forbid a man to relinquiſh his life, when it is no longer ſupportable. By the Roman laws, ſuicide was not forbidden; on the contrary, in a law of Mark Antony, which was never repealed, we find it thus written. " If " your brother or your father, being convicted " of no crime, hath put himſelf to death, either " to avoid pain, or being weary of life, or from " deſpair

" deſpair or madneſs, his Will ſhall neverthe-
" leſs be valid, or his heirs inherit according
" to law."

Notwithſtanding this humane law of our ancient maſters, we ordain, that a ſtake ſhall be driven through the corps of the offender, and his memory becomes infamous. We do all in our power to diſhonour his family. We puniſh a ſon for having loſt a father, and a widow becauſe ſhe is deprived of her huſband. We even confiſcate the effects of the deceaſed, and rob the living of that which is juſtly their due. This cuſtom, with many others, is derived from our canon law, which denies Chriſtian burial to thoſe who are guilty of ſuicide, concluding thence, that it is not lawful to inherit on earth from one who hath himſelf no inheritance in heaven. The canon law aſſures us, that Judas committed a greater crime in hanging himſelf, than in betraying Jeſus Chriſt.

CHAP.

CHAP. XX.

On a certain Species of Mutilation.

WE find, in the Pandect, a law of Adrian, which denounces death to the phyſicians who ſhould make an eunuch, either by caſtration or by bruiſing the *teſtes*. By the ſame law, the poſſeſſions of thoſe who ſuffered caſtration were confiſcated. Origen ought certainly to have been puniſhed, who ſubmitted to this operation, from the rigid interpretation of that paſſage in St. Matthew, which ſays, *There be eunuchs, which have made themſelves eunuchs for the kingdom of heaven's ſake.*

Things changed in the reigns of ſucceeding emperors, who adopted the luxury of Aſia; eſpecially in the lower empire of Conſtantinople, where eunuchs became patriarchs and generals of armies.

In theſe our own times, it is the cuſtom at Rome to caſtrate young children, to render them worthy of being muſicians to his Holineſs; ſo that *Caſtrato* and *Muſico del Papa* are ſynonimous. It is not long ſince you might have ſeen at Naples, written in great letters over the doors of certain barbers, *Qui ſi caſtrano maravigliosamente i puti:* here boys are caſtrated in the beſt manner.

CHAP.

CHAP. XXI.

On Confiscation.

IT is a maxim received at the bar, that *he who forfeits his life forfeits his effects*; a maxim which prevails in those countries where custom serves instead of law. So that, as we have already observed, the children of one who puts an end to his own life, are condemned to perish with hunger, equally with those of an assassin. Thus, in every case, a whole family is punished for the crime of an individual. Thus when the father of a family is condemned to the gallies for life, by an arbitrary sentence, whether it be for having harboured a preacher, or for hearing his sermon in a cavern or a desert, his wife and children are reduced to beg their bread.

That law which consists in depriving an orphan of support, and in giving to one man the possessions of another, was unknown in the times of the Roman republic. It was first introduced by Sylla, in his proscriptions, whose example one would scarce have thought worthy imitation. Nor indeed was this law adopted by Cesar, by Trajan, or by Antoninus, whose name

is ſtill pronounced with reſpect by all nations; and under Juſtinian, confiſcation took place only in caſe of high-treaſon.

It ſeems that, in the times of feudal anarchy, princes and lords not being very rich, ſought to increaſe their revenue by the condemnation of their ſubjects. Their laws being arbitrary, and the Roman juriſprudence unknown, cuſtoms either cruel or ridiculous prevailed. But now that the power of princes is founded on immenſe and certain revenues, there can be no need to ſwell their treaſuries with the inconſiderable wreck of an unfortunate family.

In countries where the Roman law is eſtabliſhed, confiſcation is not admitted, except within the juriſdiction of the parliament of Toulouſe. It was formerly the law at Calais, but was aboliſhed by the Engliſh, whilſt that city was in their poſſeſſion. It is ſtrange, that the inhabitants of the capital ſhould be ſubject to a ſeverer law than the people in the country: but laws, like the cottages in a village, were generally eſtabliſhed by accident, and without attention to the regularity of a general plan.

Who would believe that, in the year 1673, in the moſt brilliant period of the kingdom of France, the advocate-general, Omer Talon, did in full parliament expreſs himſelf, on the ſubject

ject of a young lady named Canillac, in the following words.

" God says, in the 13th chapter of Deutero-
" nomy, If thou comest into a city where idola-
" try reigneth, thou shalt surely smite the inha-
" bitants of that city with the edge of the sword,
" destroying it utterly and all that is therein.
" And thou shalt gather all the spoil thereof in-
" to the midst of the street, and shalt burn with
" fire the city, and all the spoil thereof, for the
" Lord thy God; and it shall be an heap for
" ever; and there shall cleave nought of the
" cursed thing to thine hand."

" In like manner, in the crime of high-treason,
" the children were deprived of their inheritance,
" which became forfeited to the king. Naboth
" being prosecuted *quia maledixerat regi*, king
" Ahab took possession of his effects. David
" being informed that Mephibosheth had re-
" belled, gave all his possessions to Ziba who
" brought him the news: *tua sint omnia quæ*
" *fuerunt Mephibosheth.*"

The question in dispute was, who should inherit the paternal estate of Mlle. de Canillac, which having been confiscated, was abandoned by the king to a lord of the treasury, and afterwards bequeathed by him to the testatrix. In this cause concerning a girl of Auvergne it was,

that an advocate-general referred to Ahab, king of a part of Paleſtine, who confiſcated the vineyard of Naboth, after aſſaſſinating the owner with the ſword of juſtice: an action ſo abominable as to have paſſed into a proverb, intended to inſpire mankind with deteſtation for ſuch acts of tyranny. There was certainly no analogy between the vineyard of Naboth and the inheritance of Mlle. de Canillac; nor hath the murder and confiſcation of the poſſeſſions of Mephiboſheth, the grandſon of Saul, and ſon of Jonathan, the friend and protector of David, the leaſt affinity with the will of this lady.

It was with ſuch pedantry, with ſuch fooliſh quotations foreign to the ſubject, with ſuch ignorance of the firſt principles of human nature, with ſuch prejudices ill conceived and ill applied, that laws have been explained and executed, by men who acquired reputation in their ſphere. I leave to the reader that, which to tell him were ſuperfluous.

CHAP.

CHAP. XXII.

On criminal Procedure, and other Forms.

IF, in France, it ſhould ever happen that the laws of humanity ſoften ſome of our rigorous cuſtoms, without facilitating the commiſſion of crimes, we may hope for reformation in thoſe legal proceedings, wherein our legiſlators ſeem to have been influenced by too much ſeverity. Our criminal procedure appears in many inſtances to point only at the deſtruction of the accuſed. It is the only law which is uniform throughout the whole kingdom; a law which ought certainly to be no leſs favourable to the innocent, than terrible to the guilty.

In England a man may recover damages for falſe impriſonment. In France, on the contrary, an innocent perſon, who has had the misfortune to be thrown into a dungeon and tortured almoſt to death, has no conſolation, no damages to hope for, no action againſt any one; and to add to his misfortune, he has for ever loſt his reputation. Why? Becauſe his joints have been diſlocated; a circumſtance which ought rather to inſpire compaſſion and reſpect. The diſcove-

ry of crimes, ſay they, requires ſeverity: it is a war of human juſtice againſt iniquity. But there is generoſity and compaſſion even in war. The brave are ever compaſſionate; and ſhall the law delight in barbarity?

Let us compare the criminal procedure of the Romans with ours. With them, the evidence were heard publicly in preſence of the accuſed, who might anſwer or interrogate them, or employ counſel. This procedure was open and noble; it breathed Roman magnanimity.

With us, all is conducted in ſecret. A ſingle judge, only attended by his clerk, hears each witneſs ſeparately. This cuſtom, eſtabliſhed by Francis I. was confirmed by the commiſſioners who were employed to digeſt the ordinance of Lewis XIV. in 1670; which confirmation was entirely owing to a miſtake. They imagined, in reading the code *de Teſtibus*, that the words *teſtes intrare judicii ſecretum*, ſignified that the witneſſes were examined in private; but *ſecretum* means here the chamber of the judge. *Intrare ſecretum*, if intended to ſignify private interrogation, would be falſe Latin. This part of our law therefore is founded on a ſoleciſm.

The evidence in theſe caſes are commonly the dregs of the people, whom the judge may, in ſuch private examination, make ſay whatſoever he

he pleaſes. They are examined a ſecond time, but ſtill privately; and if, after this re-examination, they retract from their depoſition, or vary in any material circumſtance, they are puniſhed as falſe evidence. So that if a ſimple honeſt fellow, recollecting that he has ſaid too much, that he miſunderſtood the judge, or the judge him, revoke his depoſition from a principle of juſtice, he is puniſhed as a reprobate. The natural conſequence of this is, that men will confirm a falſe teſtimony rather than expoſe themſelves, for their honeſty, to certain puniſhment.

The law ſeems to oblige the magiſtrate to be the enemy of the accuſed, rather than his judge; it being left in the power of the magiſtrate to confront the evidence with the accuſed, or not, as he ſhall think proper. Amazing! that ſo neceſſary a part of the procedure ſhould be left undetermined.

A man being ſuſpected of a crime, knowing that he is denied the benefit of counſel, flies his country; a ſtep to which he is encouraged by every maxim of the law. But he may be condemned in his abſence, whether the crime be proved or not. Strange laws! If a man be charged with owing a ſum of money, before he can be condemned to pay the demand, it is required that the debt be proved; but if his life

be

be in queſtion, he may be condemned, by default, without any proof of the crime. Is money then of more importance than life? O ye judges and legiſlators! Conſult the pious Antoninus, and the good Trajan: they ſuffered not the abſent to be condemned.

Do your laws then allow the privilege of counſel to an extortioner, or a fraudulent bankrupt, and refuſe it to one who may poſſibly be a very honeſt and honourable man? If there ever were an inſtance of innocence being juſtified by means of counſel, the law, which deprives the accuſed of that benefit, is evidently unjuſt.

The parliament of Toulouſe hath a very ſingular cuſtom relative to the validity of evidence. In other places demi-proofs are admitted, which is a palpable abſurdity, there being no ſuch thing as demi-truth; but at Toulouſe they admit of quarters and eighths of a proof. For inſtance, an hearſay may be conſidered as a quarter, and another hearſay, more vague than the former, as an eighth: ſo that eight hearſays, which in fact are no other than the echo of a groundleſs report, conſtitute a full proof. Upon this principle it was, that poor Calas was condemned to the *wheel*.

CHAP.

CHAP. XXIII.

The Idea of Reformation.

MAGISTRATES are in themſelves ſo reſpectable, that the inhabitants of the only country in which they are venal, ſincerely pray to be delivered from this cuſtom: they wiſh that the civilian may by his merit eſtabliſh that juſtice, which in his writings he hath ſo nobly defended. We may then poſſibly hope to ſee a regular and uniform ſyſtem of laws.

Shall the law of the provinces be always at variance with the law in the capital? Shall a man be right in Britanny, and wrong in Languedoc? Nay, there are as many laws as there are towns; and, even in the ſame parliament, the maxims of one chamber are not the maxims of another.

What aſtoniſhing contrariety in the laws of one kingdom! In Paris, a man who has been an inhabitant during one year and a day, is reputed a citizen. In *Franche-Comte*, a freeman who, during a year and a day, inhabits a houſe in mortmain, becomes a ſlave; his collateral heirs are excluded from inheriting his foreign acquiſitions,

ſitions, and even his children are deprived of their inheritance, if they have been a year abſent from the houſe in which the father died. This province is called *Franche*, but where is their freedom?

Were we to attempt to draw a line between civil authority and eccleſiaſtical cuſtoms, what endleſs diſputes would enſue? In ſhort, to what ſide ſoever we turn our eyes, we are preſented with a confuſed ſcene of contradictions, uncertainty, hardſhips, and arbitrary power. In the preſent age, we ſeem univerſally aiming at perfection; let us not therefore neglect to perfect the laws, on which our lives and fortunes depend.

THE END.